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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 222.

EMANUEL HAHN, APPELLANT,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 10, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 222.

EDWARD HAHN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

EMANUEL HAHN
vs.
THE UNITED STATES. } No. 11598.

I. *Petition of discovery.—Filed under Rule IV, May 26, 1877, of the rules of the Court of Claims.*

To the honorable Court of Claims:

The petition of Emanuel Hahn, of Troy, Rensselaer County, New York.

Under an appointment of the President of the United States, made by
and with the consent of the Senate, the claimant held the office of surveyor of customs in the district of New York from May 28th, 1872, to
June 22nd, 1874, during said period of time he was, as such surveyor,
entitled, under the first section of the act of March 2, 1867, to share
equally with the collector, naval officer, and surveyors appointed
2 for said district in one-fourth part of all moneys realized for fines,
penalties, and forfeitures in cases of seizure made in said district
under laws relating to customs.

One collector, one naval officer, and several surveyors, whose names and number are unknown to the claimant, were appointed for and held office in said district during said period of time.

The claimant was entitled to an equal share of the fourth part of such moneys allowed by law to such collector, naval officer, and surveyors.

Large sums of money realized for fines, penalties, and forfeitures in
cases of seizures made in said district under laws relating to the customs
were made between the 28th day of May, 1872, and the 22nd day of
June, 1874, but no part thereof was ever paid to claimant except the sum
of $225, which was received under protest by the claimant.

3 The claimant is unable to specify all the cases in which moneys
were realized and distributed as aforesaid during said period of
time, or the amounts so realized and distributed, or the names or number of the surveyors appointed for said district during said period of time without an examination of papers in the Treasury Department, and has been unable to obtain an examination of the same on application to said department, and he therefore prays the court to request the honorable Secretary of the Treasury to furnish a statement of the same to enable him to prepare his completed petition herein.

No assignment or transfer of said claim, or of any part thereof, or of
any interest therein, has been made, and no action thereon has been had
by Congress or by any of the departments, except as shown in the letters
marked A, B, and C, hereto annexed.

4 The claimant is a citizen of the United States, a resident of the
city of Troy, county of Rensselaer, and State of New York, and
is the sole owner of said claim.

He demands judgment against the United States for such sum as shall be found due him by reason of the premises.

PAINE & GRAFTON,
Claimant's Attorneys.

DISTRICT OF COLUMBIA, *ss:*

Benj. F. Grafton, having been duly sworn, on his said oath says that he is one of the attorneys for Emanuel Hahn, the claimant in the above cause, and the foregoing petition is true, except as to matters therein stated on information and belief, and that as to those matters he believes it to be true.

BENJ. F. GRAFTON.

Sworn to and subscribed before me this 25th day of May, 1877.

SAMUEL C. MILLS, [L. S.]
Notary Public.

Claimant's post-office address, Troy, N. Y.; claimant's att'ys, Paine & Grafton, Washington, D. C.

5 II. *Completed petition.—Filed March* 6, 1878.

To the honorable Court of Claims:

The petitioner, a citizen of Troy, in the county of Rensselaer, and State of New York, held the office of surveyor of customs in the district of New York from June 13, 1872, to June 22, 1874, under and by virtue of an appointment of the President of the United States, made by and with the advice and consent of the Senate.

One collector, one naval officer, and three surveyors were appointed for, and held office in, said district during said period of time, and from the 28th day of April, 1874, to the said 22d day of June, 1874, a fourth surveyor held office in said district.

From the said 13th day of June, 1872, to the said 28th day of April, 1874, the claimant was, as such surveyor, entitled, under the provisions of the first section of the act of March 2, 1867, to share equally with the collector, naval officer, and two other surveyors in one-fourth part of all moneys realized for fines, penalties, and forfeitures in cases of
6 seizures made in said district under laws relating to the customs;
and also to share equally with the collector, naval officer, and three other surveyors in one-fourth part of all moneys so realized between said 28th day of April, 1874, and said 22d day of June, 1874.

The amount realized from the fines, penalties, and forfeitures incurred in cases of seizures made, as aforesaid, in said district between said 13th day of June, 1872, and said 28th day of April, 1874, was $839,819.44, and the amount so realized therein during the period commencing on said 28th day of April, 1874, and ending on said 22d day of June, 1874, was $14,604.11. The claimant is entitled to one-fifth part of one-fourth part of said sum of $839,819.44, and to one-sixth part of one-fourth part of said sum of $14,604.11, amounting to the aggregate sum of $42,599.47, less the sum of $275 already received under protest by the claimant on account of such fines, penalties, and forfeitures. The amount now due is $42,324.47.

No assignment or transfer of said claim, or any part thereof, or interest therein, has been made, nor has any action thereon been had by Congress, or by any of the departments, except as shown in the exhibits marked A, B, and C, hereto annexed. The claimant is a citizen of the United States, a resident of the city of Troy, county of Rensselaer, and State of New

York, and is the sole owner of said claim, and no other person has any interest therein. The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and effects. He has at all times borne true allegiance to the Government of the United States, and has not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against said government.

The claimant demands judgment against the United States for the sum of $42,324.47.

PAINE & GRAFTON,
Claimant's Attorneys.

7 DISTRICT OF COLUMBIA, *ss:*

B. F. Grafton, having been duly sworn, says that he is one of the attorneys for the claimant in this cause, and that the foregoing petition is true, except as to matters therein stated on information and belief, and that as to those matters he believes it to be true.

B. F. GRAFTON.

Sworn and subscribed before me this 6th day of March, 1878.
[L. S.] JOHN RANDOLPH,
Ass't Cl'k C't of Claims.

Post-office address of claimant, Troy, New York.
" " " claimant's attorney, Washington, D. C.

A.

TROY, NEW YORK, *March* 3, 1877.

HON. SECRETARY OF THE TREASURY:

MY DEAR SIR: I have received from the collector of the district a draft for the money due to me, as per statement from the Commissioner of Customs, dated February 27, 1877. I also received a check from the collector for cases Nos. 762 and 763, which were lately distributed. ("Share of fines, penalties, and forfeitures.")

I am of the same opinion, and my mind has not been changed relating to "fines, penalties, and forfeitures," that they have not been distributed according to law, as provided in section 1, act of March 2, 1867, 14 Statute, page 546, and I would respectfully call the attention of the department to a letter sent by me to the department, dated March 20, 1874.

I hold the twenty-five dollars sent to me, as above mentioned, and also the amount mentioned in my letter of March 20, 1874, subject to further direction or decision, according to law, as the letter sent to me in reply to my letter dated March 20, 1874, does not cover the ground to fines, penalties, and forfeitures.

I am, sir, very respectfully, your obedient servant,

EMANUEL HAHN,
Ex-Surveyor.

B.

8 CUSTOM-HOUSE, TROY, NEW YORK,
Surveyor's Office, March 20, 1874.

HON. WILLIAM RICHARDSON,
Secretary of the Treasury, Washington, D. C.:

HONORABLE SIR: I have received, on the 13th day of this month, from the collector of customs of the district of New York (General C. A. Arthur), one-fourth of the sum realized by "fines, penalties, and forfeitures," for violations of the revenue laws in collector's cases Nos. 495, 496, 497, 498, 499, 500, 501, 502, 645, 646, 647, 648, 649, 650, 651, 652, 808, and 809, which were lately distributed.

I do not think I am entitled to the whole of "one-fourth" of such moneys, and, therefore, write you for a decision in the matter, as I understand there are two cases yet to be distributed, to wit: Nos. 762 and 763, and would like a decision before their distribution is made, and, if it be proper, I would like an opinion from the Attorney-General in regard to it. In the mean time I hold the money I have received, subject to your decision.

My position is this:

I am a surveyor of customs for the district of New York, residing at the port of Troy; I was regularly appointed, and took the oath of office before the collector of this district (General Arthur), as required by law (act March 2, 1799, section 20), and I am under his supervision, and, report to and receive my salary from him.

Now, I claim that I am none the less a surveyor for the district of New York because residing at Troy—Troy being one of the ports in said district.

Section 1 of the act of March 2, 1867, (14 Stat., 546), after disposing of three-fourths of the moneys realized for fines, penalties, and forfeitures, provides for the disposition of the remaining one-fourth as follows: "and the remaining one-fourth to be equally divided between the collector, naval officer, and surveyor, or such of them as are appointed for the district in which the seizure has been made or the fine or penalty incurred."

While I am the only one of such officers residing at the port of Troy, yet it by no means follows that I am the only one of such officers "appointed for the district" in which said port is located; hence I do not think I am entitled to the whole of one-fourth of the moneys realized from the cases above enumerated, but only to an equal share thereof, with
9 "the collector, naval officer, and surveyors appointed for the district in which the seizures were made or fines and penalties incurred."

Under the mode of distribution provided by the law previous to the act of 1877, above referred to, the money be "divided equally between the collector and naval officer of the district and the surveyor of the port," &c.; but under the present law, I can see no reason why not only the collector and naval officer, but all the surveyors "appointed for the district," &c., should not be entitled to share in the distribution.

It is this belief that has led me to ask a decision in this matter, as I think that justice to all concerned requires a settlement of the question.

Hoping for immediate attention to my request, I am, sir,

Very respectfully, your obedient servant,

EMANUEL HAHN,
Surveyor of Customs of the Port of Troy,
in the District of New York.

C.

TREASURY DEPARTMENT,
Washington, D. C., June 16, 1874.

SIR: Referring to your letter relative to distributive shares of fines and forfeitures accruing in the district of New York, I am directed by the Secretary to transmit to you the inclosed copy of a letter to Hon. Eli Perry, relative to the claim of Mr. Keeler, surveyor of the port of Albany, New York.

Respectfully, yours,

J. P. HARTLEY,
Assistant Secretary.

To EMANUEL HAHN, Esq.,
Surveyor of Customs, Troy, New York.

TREASURY DEPARTMENT,
Washington, D. C., June 15, 1874.

SIR: The two letters of the surveyor of customs, at Albany, filed by you, were duly received, and his claim has been considered.

10 The claim is substantially that, under the law of March 2, 1867, the surveyors at ports of delivery are entitled to share in the proceeds of customs fines, penalties, and forfeitures, equally, with the collector, surveyor, and naval officer of the port of entry of the district. And he asks that the question thus raised may be referred to the Attorney-General.

I am fully disposed to ask the instruction and advice of the Attorney-General on doubtful questions of law in regard to which no positive rule of action has been adopted and adhered to by my predecessors.

But, in my judgment, this is not such a question. The "surveyor" mentioned in the act referred to has ever been supposed by the department to be the surveyor of the port of entry, the place at which the fraud or offense was committed or discovered, and on this supposition very large sums have been distributed.

This construction seems to me to be a reasonable one, and having been acquiesced in ever since the passage of the law, cannot, with justice or propriety, be reversed. The application of Surveyor Keeler is, therefore, declined.

Very respectfully,
(Signed) B. H. BRISTOW,
Secretary.

Hon. ELI PERRY,
House of Representatives.

11 III. *Traverse.—Filed March* 15, 1878.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United

States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Ass't Att'y General.

12 IV. *Findings of fact and conclusion of law.—Filed April* 28, 1879.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

1. On the 13th of June, 1872, the claimant was appointed surveyor of customs at the port of Troy, N. Y., and continued to act as such officer until May 28, 1876.

2. During the period from June 13, 1872, to June 22, 1874, Alonzo B. Cornell was surveyor of customs at the port of New York to March 31, 1873, and George H. Sharpe from March 31, 1873, to June 22, 1874; Isaac N. Keeler was surveyor of customs at the port of Albany; and from April 28, 1874, Frank P. Norton was surveyor of customs at the port of Port Jefferson; all in the collection district of the city of New York.

3. There was collected and paid into the Treasury of the United States, from the proceeds of fines, penalties, and forfeitures incurred at the port of New York, between June 13, 1872, and April 28, 1874, the sum of $839,819.40, and more, and between April 28 and June 24, 1874, $14,604.11, and more, after making the deductions required by law; of which sums, in the distribution made by the Secretary of the Treasury, one-fourth part was paid to the collector, naval officer, and surveyor, at the port of New York as such officers, and not as informers or seizing officers, and none thereof was paid to the claimant, which distribution was made in accordance with the uniform practice of the Treasury Department, under the law of March 2, 1807, ch. 188 (14 St., 546).

4. During the same period, between June 13, 1872, and June 22, 1874, there was paid into the Treasury, from fines incurred at the port of Troy aforesaid, on persons for not surrendering licenses of canal-boats as required by law, the sum of $1,000, of which in the distribution thereof, by the Secretary of the Treasury, one-fourth was paid to the claimant as informer or seizing officer, and no other share was allowed to him.

5. Letters, copies of which are annexed to the claimant's petition, passed between the parties therein named as alleged by the claimant.

CONCLUSION OF LAW.

The claimant is not entitled to recover, and his petition must be dismissed.

V. *Opinion of the court.*

RICHARDSON, J., delivered the opinion of the court:

On the 13th of June, 1872, the claimant was appointed surveyor of customs at Troy, in the customs collection district of the city of New York, under the provisions of the act of March 2, 1799, ch. 22, § 5 (1

Stat., 631), which authorized the President, "if he judge it expedient, to appoint one other surveyor, to reside at such other place in said district as he shall appoint," in addition to one at New York City and one at Albany. This provision was omitted in the revision of the statutes, and as part of the act in which it stood was incorporated therein, it was repealed (R. S., § 5596) by the passage of the Revised Statutes June 22, 1874, at which date the repeal took effect. Section 5595 of those statutes declares that they embrace the laws in force on the 1st day of December, 1873, as they do where no alterations were made thereby, but alterations did not go into operation until the statutes were passed, June 22, 1874. This omission appears not to have been discovered by the officers of the government for nearly two years afterwards, and the claimant continued to act as surveyor until May 28, 1876.

While he legally held the office the act of March 2, 1867, ch. 188 (14
St., 546, now R. S., § 3090), regulating the disposition of the proceeds of
fines, penalties, and forfeitures incurred under the laws relating to customs
was in force, and so much as provided for the distribution of any part to
informers and officers of the United States was repealed on the same day
that the Revised Statutes were enacted, June 22, 1874, ch. 391, §§ 1, 2 (18
St., 186). Within that time fines, penalties, and forfeitures were
13 incurred under the customs laws at the port of New York, which
were paid into the Treasury as required by law, to the amount of
$839,819.40 between June 13, 1872, and April 28, 1874, while there were
in the district a collector and naval officer at New York, and a surveyor
at each of the ports of New York, Albany, and Troy, and $14,604.11 between April 28 and June 24, 1874, when the law was repealed, while in
addition to said officers there was a surveyor at Port Jefferson, in said district.

In the one-fourth part of such fines, &c., which, by the act of 1867, was required to be "equally divided between the collector, naval officer, and surveyor, or such of them as are appointed for the district," the claimant sets up in this action a right to share equally with each of those officers; that is, one-fifth of one-fourth of the first-mentioned sum and one-sixth of one-fourth of the last sum. The Secretary has distributed and paid said quarter to the collector, naval officer, and surveyor of the port of New York in equal portions, according to the uniform practice of the Treasury Department since the passage of that act.

The case will be better understood if we consider the official status of the customs officers and their relation to each other, and review the course of legislation on the subject of the distribution of fines, penalties, and forfeitures from the first act of Congress in 1789 to the last in 1867.

For customs purposes collection districts are established, each territorially described, embracing towns, cities, waters, or shores, ten of which are in the State of New York (R. S., § 2535). In each district there is a port of entry, which is also a port of delivery (R. S., § 2770). In most of the districts there are ports of delivery which are not ports of entry. Each district has one and only one collector, who is required to reside at a port of entry; some few districts have respectively one and none more than one naval officer, and some have each one and only one surveyor, required in like manner to reside at a port of entry. There are, moreover, surveyors appointed to reside at ports of delivery in districts where there are also surveyors at the ports of entry, as in the claimant's district he was a surveyor required to reside at Troy while there was one at Albany and another for part of the time at Port Gibson, in addition to the one at New York City (R. S., § 2536).

The act of July 31, 1789, to regulate the collection of duties, &c., ch. 5, § 38 (1 St., 48), provided:

"That all penalties, fines, and forfeitures recovered by virtue of this act (and not otherwise appropriated) shall, after deducting all proper costs and charges, be disposed of as follows: One moiety shall be for the use of the United States and paid into the Treasury thereof; and the other moiety shall be divided into three equal parts, and paid to the collector, naval officer, and surveyor of the district wherein the same shall have been incurred; and in such districts where only two of the aforesaid officers shall have been established, the said moiety shall be equally divided between them; and in such districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer: Provided, nevertheless, that in all cases where such penalties, fines, and forfeitures shall be recovered in pursuance of information given to such collector by any person other than the said naval officer and surveyor, the one-half of such moiety shall be given to the informer, and the remainder thereof shall be disposed of between the collector, naval officer, and surveyor in manner and form as above limited and expressed."

That section was soon superseded by the act of August 4, 1790, to provide more effectually for the collection of the duties imposed by law, &c., ch. 35, § 69 (1 Stat., 177), which provided:

"That all penalties, fines, and forfeitures recovered by virtue of this act (and not otherwise appropriated) shall, after deducting all proper costs and charges, be disposed of as follows: One moiety shall be for the use of the United States, and paid into the Treasury thereof; the other moiety shall be divided into equal parts, and paid to the collector and naval officer of the district, and surveyor of the port wherein the same shall have been incurred, or to such of said officers as there may be in the said district; and in districts where only one of the aforesaid officers shall be established, the said moiety shall be given to such officer: Provided, nevertheless, that in all cases where such penalties, fines, and forfeitures shall be recovered in pursuance of information given to such collector by any person other than the naval officer or surveyor of the district, the one-half of such moiety shall be given to the informer, and the remainder thereof shall be disposed of between the collector, naval officer, and surveyor or surveyors, in manner aforesaid."

The act of March 2, 1799, ch. 22, § 97 (1 Stat., 697), while it made some additional provision not material to be considered in this case, substantially and in almost the identical language, re-enacted section 69 of the act of 1790 above quoted, so that it is unnecessary to repeat it here.

Thus the doubt which the first act presented as to which surveyor was entitled to share in the proceeds of fines, &c., under the words surveyor of the district, was removed by the two next succeeding acts on the subject, the true construction of which, and the intention of Congress expressed thereby, are clear. The second moiety was to be paid in equal parts to the collector and naval officer of the district, and the surveyor of the port wherein the fines, &c., were incurred, there being but one such officer in any port, and not as before to the surveyor of the district, a designation which might apply with equal propriety, in some cases, to several such officers of different ports. The proviso adds an exception, that when the fines, &c., were recovered upon information of any person other than the naval officer or surveyor of the district, one-half of the second moiety was to go to the informer, and the other half to the collector, naval officer, and surveyor, or surveyors "in manner aforesaid," that is, in equal parts to each. This proviso, contained in both the later acts, in connection with the other provisions wherein the word surveyor is used in the singular number, shows that Congress intended that all the surveyors of a district should share in the distribution only in cases where there was no informer other than one of the officers named, and that in other cases the surveyor of the port where the offenses were committed should, alone, of all the surveyors, be entitled to share in the proceeds of fines, penalties, and forfeitures.

14 Thus the law stood until 1867, when the act of March 2, of that year, chap. 188, was passed (14 St., 546), wherein the following provisions (now R. S., § 3090) were enacted, superseding the sections of former acts, which we have before set forth:

> "That from the proceeds of fines, penalties, and forfeitures incurred under the provisions of the laws relating to the customs, there shall be deducted such charges and expenses as are by law in each case authorized to be deducted, and in addition, in the case of the forfeiture of imported merchandise of a greater value than five hundred dollars, on which duties have not been paid, or in case of a release thereof upon payment of its appraised value, or of any fine or composition in money, there shall also be deducted an amount equivalent to the duties in coin upon such merchandise (including the additional duties, if any), which shall be credited in the accounts of the collector as duties received, and the residue of the net proceeds aforesaid shall be paid into the Treasury of the United States and distributed, under the direction of the Secretary of the Treasury, in the manner following, to wit: One-half to the United States; one-fourth to the person giving the information which led to such seizure or to the recovery of the fine of penalty; and if there be no informer other than the collector, naval officer, or surveyor, then to the officer making the seizure; and the remaining one-fourth to be equally divided between the collector, naval officer, and surveyor, or such of them as are appointed for the district in which the seizure has been made or the fine or penalty incurred, or if there be only a collector, then to such collector."

This act made extensive changes in the law, among which was a transfer of the duty of making the distribution of the proceeds of fines, penalties, and forfeitures to the Secretary of the Treasury from collectors of customs, who had previously performed that service (act of 1799, ch. 22, § 89, 1 Stat., 695; Bradley's case, 12 C't Cl., 578), and who were thereafter required to pay the whole net proceeds into the Treasury. The shares for distribution were changed from moieties to fourths, and the last fourth was to be divided between the collector, naval officer, and surveyor of the district; returning to the language of the first act of 1789, where the same term, surveyor of the district, is used, and departing from that of the next two acts, by which the surveyor of the port where the fines were incurred was designated as the surveyor who was to share therein, and by which, in case there was no informer, all the surveyors in the district were to share equally with the collector and naval officer.

The question at once arose as to who was intended by the words surveyor of the district in this act, where there were several surveyors in the same district, one at the port of entry and delivery, and others at ports of delivery only. The language was inaccurate in its application to such a case, and the proper construction to be given to it could not be determined beyond all doubt from the words of the act alone. One view was that surveyor in the singular was to be taken in the plural signification where there were several in the district, and that all were entitled to share alike, as is now urged by the claimant; but the plural form had been used, apparently with care, in the proviso in each of the two next preceding acts as to a certain class of cases, and its omission here seemed to indicate an intention not to allow more than one surveyor to share in the distribution. Another view was that the surveyor of the port where the fines were incurred was intended, as expressed in each of the two former acts; but the change from that form of expression to surveyor of the district seemed to preclude the inference that Congress did not intend to make a change in that respect.

The only other view which could be presented was that the surveyor at the port of entry alone was designated or intended to be designated; and this was supported by the fact that he had a position of much greater importance and responsibility than that of surveyors of ports of delivery and was regarded as the principal surveyor of the district; and that nearly all fines, penalties, and forfeitures were incurred at ports of entry. In this view, the words "or such of them as are appointed for the district" following "collector, naval officer, and surveyor" were not supposed to enlarge the meaning of surveyor to the plural sense, as it could not so enlarge the meaning of collector or naval officer—because there was but one of each in any district—but were used rather to express the same meaning in more concise language, as the words in the act of 1789, to wit, "Where only two of the aforesaid officers shall have been established, the said moiety shall be equally divided between them, and in such districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer;" recognizing in no case more than three—one collector, one naval officer, and one surveyor; and as nearly the same words in each of the two next succeeding acts—"or to such of said officers as may be in the said district" following "collector, naval officer, and surveyor of the port"—were manifestly used, to refer in no case to more than one surveyor, since there was never but one surveyor at any one port. The Secretary of the Treasury adopted the latter construction, and held that the surveyor of the port of entry was intended, to the exclusion of the surveyors of ports of delivery, andt hat the former alone was entitled as such to share in the fines, penalties, and forfeitures. This was the contemporaneous construction made by the high executive officer appointed to execute the law, who, we may presume, understood the working of the previous acts and the circumstances under which the law was changed.

With this construction Congress never interfered while the law was in force; and all parties concerned seem to have acquiesced therein until its correctness was drawn in question by the claimant and the surveyor at Albany a few months before the repeal of all provisions on the subject. On the 20th of March of that year the claimant addressed a letter to the

Secretary of the Treasury, a copy of which is annexed to his petition in this case, asking a reconsideration of the question, and that the opinion of the Attorney-General might be taken thereon. It was reconsidered,
15 and the claimant was notified by letter of June 15, 1874, a copy of
which is also annexed to the petition, wherein the Secretary says that the construction adopted seemed to him "to be a reasonable one, and, having been acquiesced in ever since the passage of the law, cannot with justice or propriety be reversed." The claimant appears to have made no further objections until March 3, 1877, and he never gave notice that he intended to have the matter contested in court, nor asked the Secretary to retain the money in his control until a judicial determination could be had, but rather submitted to the adverse decision against him, until May, 1877, when he filed his first petition in this case. The letter of March 20, 1874, which his counsel calls a protest, in fact protested only against the award of money to himself alone as informer or seizing officer, which he was clearly entitled to, and the proper disposition of which was not involved in the question raised, although he no doubt supposed it was.

Under these circumstances we are all of opinion that the construction adopted has become the one which must govern all distributions under that act, and that it is now too late, after such vast sums of money have been paid out in accordance therewith, and the provisions of the law itself have been repealed, and can further operate only upon the few remaining cases of distribution on account of collections made for fines, penalties, and forfeitures incurred before June 22, 1874.

In the recent case of the United States vs. Pugh (98 U. S.) the Chief Justice, in giving the opinion of the Supreme Court therein, says, "It is a familiar rule of interpretation that in the case of a doubtful and ambiguous law the contemporaneous construction of those who have been called upon to carry it into effect is entitled to great respect (Edwards, lessee, vs. Darby, 12 Wheat., 210). While, therefore, the question is one by no means free from doubt, we are not inclined to interfere, at this late day, with a rule which has been acted upon by the Court of Claims and the Executive for so long a time."

The present case is one to which that principle applies with peculiar force, especially as the construction of the law adopted by the Secretary of the Treasury does not appear unreasonable, and might well have been reached in the exercise of a sound judgment. We are therefore justified in dismissing the claimant's petition, and such is the order of the court.

16 VI. *Final judgment.*

At a Court of Claims held at the Capitol, in the city of Washington, on the 28th day of April, A. D. 1879, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said petition of the claimant, the said Emanuel Hahn, be dismissed.

17 VII. *Application of claimant for and allowance of an appeal.*

And now comes the claimant, by Grafton and Ladd, his attorneys, and makes application for an appeal to the Supreme Court of the United States from the judgment herein rendered.

GRAFTON AND LADD,
Claimant's Att'ys.

Filed May 26, 1879.

And now, to wit, May 26, 1879, it is ordered that the appeal be allowed as prayed for.

18 In the Court of Claims.

EMANUEL HAHN
vs.
THE UNITED STATES. } No. 11598.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the claimant for the allowance of an appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 30th day of July, A. D. 1879.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 222. Emanuel Hahn, appellant, vs. The United States. Court of Claims. Filed May 10th, 1880.

OFFICE SUPREME COURT U.S.
FILED
MAR 29 1883
JAMES H. McKENNEY, Clerk.

17-402

Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 222.

EMANUEL HAHN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

HALBERT E. PAINE,
Counsel for Appellant.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term, 1882.

EMANUEL HAHN, Appellant,
v.
THE UNITED STATES.
No. 222.

BRIEF FOR APPELLANT.

STATEMENT.

The claimant's petition contained the following averments:

"The petitioner, a citizen of Troy, in the county of Rensselaer, and state of New York, held the office of surveyor of customs in the district of New York, from June 13, 1872, to June 22, 1874, under and by virtue of an appointment of the president of the United States, made by and with the advice and consent of the senate.

One collector, one naval officer, and three surveyors were appointed for, and held office in, said district during said period of time, and from the 28th day of April, 1874, to the said 22d day of June, 1874, a fourth surveyor held office in said district.

From the said 13th day of June, 1872, to the said 28th day of April, 1874, the claimant was, as such surveyor, entitled, under the provisions of the first section of the act of March 2, 1867, to share equally with the collector, naval officer, and two other surveyors, in one-fourth part of all moneys realized for fines, penalties, and forfeitures, in cases of seizures made in said district under laws relating to the customs; and also to share equally with the collector, naval officer, and three other surveyors, in one-fourth part of all moneys so realized between said 28th day of April, 1874, and said 22d day of June, 1874.

The amount realized from the fines, penalties, and forfeitures, incurred in cases of seizures made, as aforesaid, in said district, between said 13th day of June, 1872, and said 28th day of April, 1874, was $839,819.44, and the amount so realized therein during the period commencing on said 28th day of April, 1874, and ending on said 22d day of June, 1874, was $14,604.11. The claimant is entitled to one-fifth part of one-fourth part of said sum of $839,819.44; and to one-sixth part of one-fourth part of said sum of $14,604.11, amounting to the aggregate sum of $42,599.47, less the sum of $275 already received under protest by the claimant on account of such fines, penalties, and forfeitures. The amount now due is $42,324.47.

No assignment or transfer of said claim, or any part thereof, or interest therein, has been made; nor has any action thereon been had by congress or by any of the departments, except as shown in the exhibits marked 'A,' 'B,' and 'C,' hereto annexed."

Exhibits "A," "B," and "C" were in the following words:

"A."

TROY, NEW YORK, March 3, 1877.

Hon. SECRETARY OF THE TREASURY:

MY DEAR SIR: I have received from the collector of the district a draft for the money due to me, as per statement from the commissioner of customs, dated February 27, 1877. I also received a check from the collector for cases Nos. 762 and 763, which were lately distributed. ("Share of fines, penalties, and forfeitures.")

I am of the same opinion, and my mind had not been changed relating to "fines, penalties, and forfeitures," that they have not been distributed according to law, as provided in section 1, act of March 2, 1867, 14 Statute, page 546, and I would respectfully call the attention of the department to a letter sent by me to the department, dated March 20, 1874.

I hold the twenty-five dollars sent to me, as above mentioned, and also the amount mentioned in my letter of March 20, 1874, subject to further direction or decision, according to law, as the letter sent to me in reply to my letter dated March 20, 1874, does not cover the ground to fines, penalties, and forfeitures.

I am, sir, very respectfully, your obedient servant,

EMANUEL HAHN,
Ex-Surveyor.

"B."

CUSTOM-HOUSE, TROY, NEW YORK,
SURVEYOR'S OFFICE, March 20, 1874.

Hon. WILLIAM RICHARDSON,
Secretary of the Treasury, Washington, D. C.

HONORABLE SIR: I have received, on the 13th day of this month, from the collector of customs of the district of New York, (General C. A. Arthur,) *one-fourth* of the sum realized by "fines, penalties, and forfeitures," for violations of the revenue laws in collector's cases Nos. 495, 496, 497, 498, 499, 500, 501, 502, 645, 646, 647, 648, 649, 650, 651, 652, 808, and 809, which were lately distributed.

I do not think I am entitled to the whole of "*one-fourth*" of such moneys, and, therefore, write you for a decision in the matter, as I understand there are two cases yet to be distributed—to wit, Nos. 762 and 763—and would like a decision before their distribution is made; and, if it be proper, I would like an opinion from the attorney-general in regard to it. In the meantime I hold the money I have received subject to your decision.

My position is this:

I am a surveyor of customs for the district of New York, residing at the port of Troy; I was regularly appointed, and took the oath of office before the collector of this district, (General Arthur,) as required by law, (act March 2, 1799, section 20.) and I am under his supervision, and report to and receive my salary from him.

Now, I claim that I am none the less a *surveyor for the district of New York* because residing at Troy—Troy being one of the ports in said district.

Section 1 of the act of March 2, 1867, (14 Stat., 546,) after disposing of three-fourths of the moneys realized for fines, penalties, and forfeitures, provides for the disposition of the remaining one-fourth as follows: "and the remaining one-fourth to be equally divided between the collector, naval officer, and surveyor, OR SUCH OF THEM AS ARE APPOINTED FOR THE DISTRICT *in which the seizure has been made or the fine or penalty incurred.*

While I am the only one of such officers residing at the port of Troy, yet it by no means follows that I am the only one of such officers "appointed for the *district*" in which said port is located; hence, I do not think I am entitled to the *whole* of one-fourth of the moneys realized from the cases above enumerated, but only to an equal share thereof, with "the collector, naval officer, and *surveyors* appointed for the district in which the seizures were made or fines and penalties incurred."

Under the mode of distribution provided by the law previous to the act of 1877, above referred to, the money be "divided equally between the collector and naval officer *of the district and the surveyor of the port,*" &c.; but under the present law, I can see no reason why not only the collector and naval officer, but *all the surveyors* "appointed for the district," &c., should not be entitled to share in the distribution.

It is this belief that has led me to ask a decision in this matter, as I think that justice to all concerned requires a settlement of the question.

Hoping for immediate attention to my request, I am, sir, very respectfully, your obedient servant,

EMANUEL HAHN.
Surveyor of Customs of the Port of Troy,
in the District of New York.

"C."

TREASURY DEPARTMENT,
WASHINGTON, D. C., June 16, 1874.

SIR: Referring to your letter relative to distributive shares of fines and forfeitures accruing in the district of New York, I am directed by the secretary to transmit to you the enclosed copy of a letter to Hon. Eli Perry, relative to the claim of Mr. Keeler, surveyor of the port of Albany, New York.

Respectfully yours,

J. P. HARTLEY,
Assistant Secretary.

To EMANUEL HAHN, Esq.,
Surveyor of Customs, Troy, New York.

TREASURY DEPARTMENT,
WASHINGTON, D. C., June 15, 1874.

SIR: The two letters of the surveyor of customs at Albany filed by you were duly received, and his claim has been considered.

The claim is substantially that, under the law of March 2, 1867, the surveyors at ports of delivery are entitled to share in the proceeds of customs fines, penalties, and forfeitures equally with the collector, surveyor, and naval officer of the port of entry of the district, and he asks that the question thus raised may be referred to the attorney-general.

I am fully disposed to ask the instruction and advice of the attorney-general on doubtful questions of law in regard to which no positive rule of action has been adopted and adhered to by my predecessors.

But, in my judgment, this is not such a question. The "surveyor" mentioned in the act referred to has ever been supposed by the department to be the surveyor of the port of entry, the place at which the fraud or offense was committed or discovered, and on this supposition very large sums have been distributed.

This construction seems to me to be a reasonable one, and, having been acquiesced in ever since the passage of the law, cannot with justice or propriety be reversed. The application of Surveyor Keeler is, therefore, declined.

Very respectfully,

(Signed) B. H. BRISTOW,
Secretary.

Hon. ELI PERRY,
House of Representatives.

The following are the findings of facts:

"This case having been heard before the court of claims, the court, upon the evidence, finds the facts to be as follows:

1. On the 13th of June, 1872, the claimant was appointed surveyor of customs at the port of Troy, N. Y., and continued to act as such officer until May 28, 1876.

2. During the period from June 13, 1872, to June 22, 1874, Alonzo B. Cornell was surveyor of customs at the port of New York to March 31, 1873, and George H. Sharpe from March 31, 1873, to June 22, 1874; Isaac N. Keeler was surveyor of customs at the port of Albany; and from April 28, 1874, Frank P. Norton was surveyor of customs at the port of Port Jefferson; all in the collection district of the city of New York.

3. There was collected and paid into the treasury of the United States, from the proceeds of fines, penalties, and forfeitures incurred at the port of New York, between June 13, 1872, and April 28, 1874, the sum of $839,819.40, and more, and between April 28 and June 24, 1874, $14,604.11, and more, after making the deductions required by law; of which sums, in the distribution made by the secretary of the treasury, one-fourth part was paid to the collector, naval officer, and surveyor, at the port of New York as such officers, and not as informers or seizing officers, and none thereof was paid to the claimant, which distribution was made in accordance with the uniform practice of the treasury department, under the law of March 2, 1867, ch. 188 (14 St., 546).

4. During the same period, between June 13, 1872, and June 22, 1874, there was paid into the treasury, from fines incurred at the port of Troy aforesaid, on persons for not surrendering licenses of canal-boats as required by law, the sum of $1,000, of which in the distribution thereof by the secretary of the treasury one-fourth was paid to

the claimant as informer or seizing officer, and no other share was allowed to him.

5. Letters, copies of which are annexed to the claimant's petition, passed between the parties therein named as alleged by the claimant."

The court of claims concluded that the claimant was not entitled to recover and dismissed the petition.

ARGUMENT.

The decision of the court of claims is based upon an alleged contemporaneous construction of the act of March 2, 1867, by the secretary of the treasury. It is stated in the opinion of the court that there were only three possible constructions of this statute, viz., (1) that all the surveyors of the district were entitled to share in the distribution of the proceeds of the fines, penalties, and forfeitures; (2) that the distribution was restricted to the surveyor of the port where the fine, penalty, or forfeiture was incurred; and (3) that the distribution was restricted to the surveyor of the port of entry. It is said that the secretary of the treasury adopted the last of these three constructions, and that his construction must govern this case.

The court of claims reached the conclusion that an alleged construction of the act of 1867 by the secretary of the treasury was decisive of this case, by applying a rule of law, supposed to have been established by the supreme court, to a certain fact, or state of facts, alleged to exist in the case. The rule of law is that, "in the case of a doubtful and ambiguous statute, the contemporaneous construction of those who are called upon to carry it into effect is entitled to great respect." The alleged fact is that the secretary of the treasury, since the enactment of the law of 1867, has always construed it as restricting the distribution to the surveyor of the port of entry. It becomes necessary, then, at the outset, to ascertain what precise rule or principle has been established by the supreme court, and afterwards to inquire whether the record shows any fact or state of facts to which such rule or principle is applicable.

I.

The case of Edwards' lessee *v.* Darby, 12 Wheat., 207, was decided by the supreme court in 1827. One of the questions arising in the case was whether commissioners, appointed by an act of the legislature of North Carolina, forty-five years before the decision, had legal authority to cause certain surveys to be made in 1784. The court held that the statute of North Carolina, enacted in 1782, did authorize the survey, and said:

> "We admit the statute does not give the authority to survey the reservations in express terms, but do not admit that the authority may not, and does not, result, by necessary implication, from the duties they were expressly required to perform, and from the general provisions of the statute. They were not expressly required by the statute to determine what licks and springs were proper objects for reservation and came within the provisions of the statute; but they were required to lay off and cause to be surveyed the lands granted to the officers and soldiers, subject to, and so as not to interfere with, these reservations. The right of pre-emption granted by law to settlers of 640 acres each, including their settlements, were also to be avoided. It seems to result, necessarily, from these provisions that the commissioners must first determine what were the proper subjects of reservation; and having determined that a given salt lick or spring came within the provisions of the law, the power and duty of laying off, by survey, the 640 acres reserved and to be avoided around the lick, seems necessarily and irresistably to result to the commissioners in all cases where they might deem it necessary to do so, in order to enable them to lay off the lands for the officers and soldiers so as to avoid these reservations."

In this case the court, having determined the meaning of the statute, upon its own examination of the statute itself, could hardly fail to regard with respect the action of the commissioners, appointed under the law, who had practically adopted the same construction more than forty years before the case was adjudicated by the supreme court. Accordingly the court added:

> "In the construction of a doubtful and ambiguous law the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect. The law was not only thus construed by the commissioners, but that construction seems to have received, very shortly after, the sanction of the legislature."

But the construction of the commissioners was not accepted, either as a substitute for or as a basis of the exposition of the court.

In the case of The United States *v.* The State Bank of North Carolina, 6 Peters, 29, the question was whether, under the act of March 3, 1797, 1 Stat., 676, the priority of the United States, in case of a general assignment by their debtor, comprehended a bond for duties, executed before the assignment, but payable afterwards. The court, having, by its own reasoning, reached an affirmative decision of this question more than forty years after the statute was enacted, added the following statement:

> "It is not unimportant to state that the construction which we have given to the terms of the act is that which is understood to have been practically acted upon by the government, as well as by individuals, ever since its enactment. Many estates, as well of deceased persons as of persons insolvent, who have made general assignments, have been settled upon the footing of its correctness. A practice so long and so general would, of itself, furnish strong grounds for a liberal construction, and could not now be disturbed without introducing a train of serious mischiefs. We think the practice was founded in the true exposition of the terms and intent of the act; but if it were susceptible of some doubt, so long an acquiescence in it would justify us in yielding to it as a safe and reasonable exposition."

In the case of The United States *v.* Macdaniel, 7 Peters, 1, the question was whether a clerk in the navy department, who had, in obedience to orders of the secretary of the navy, given without express authority of law, performed the extra duty of disbursing certain moneys for that department, was entitled to set up, by way of offset to a demand of the government, an equitable claim for additional compensation for such extra services actually rendered. The court held that, although the claim was one which the auditor of the treasury could not lawfully allow, it could be allowed in this form by the courts. Until this clerk was removed, in 1829, the secretaries of the navy had construed the act of March 27, 1804, 3 Stat., 297, as not imposing the duty of making these disbursements on the commander of the Washington navy yard, and had imposed them, as extra duties, upon the clerk Macdaniel; and he had, for many years, received an additional compensation for the service; but a balance of this compensation remained unpaid at the time of his removal. After his removal a new construction of the act of 1804 was adopted by the secretary, and the duties were imposed upon the commander of the Washington navy yard. Thereupon the auditor declined to allow the balance unpaid for services actually rendered under the old construction before the new construction was adopted. The court held that the first construction was correct, and said:

> "Until this time the act of 1804 seems never to have been construed by the head of the navy department as providing for the special services performed by the defendant; and it would seem from the provision of the late act, which requires the agent to act, not only for the navy yard, but for the navy department, and to 'pay such accounts and claims as the secretary may direct,' that the former construction was correct; and the court are of this opinion."

But the court also held that, whether the first construction was, or was not, correct, the clerk was entitled to offset his demand, in the suit brought by the United States. The opinion concludes as follows:

> "It would be a novel principle to refuse payment to the subordinates of a department because their chief, under whose direction they had faithfully served the public, had mistaken his own powers and had given an erroneous construction of the law. But the case under consideration is stronger than this. It is not a case where payment for services is demanded, but where the government seeks to recover money from the defendant to which he is equitably entitled for services rendered. This court can not see any right, either legal or equitable, to the sum of money for the recovery of which this action is brought. They think that the secretary of the navy, in authorizing the defendant to make the disbursements on which the claim for compensation is founded, did not transcend those powers, which, under the circumstances of the case, he might well exercise."

The act of April 20, 1818, 3 Stat., 466, contains the proviso:

> "That the whole amount which any receiver of public moneys shall receive, under the provisions of this act, shall not exceed *for any one year* the sum of $3,000."

In United States *v.* Dickson, 15 Peters, 54, the main question was whether the words "for any one year" referred to the fiscal year, or to the official year commencing on the day and month of the date of the receiver's commission. The court said:

> "It has also been argued that the uniform construction given to the act of 1818, ever since its passage, by the treasury department, has been that the act had reference to the fiscal year. The construction, so given by the treasury department, to any law affecting its arrangements and concerns is certainly entitled to great respect. Still, however, if it is not in conformity to the true intendment and provisions of the law, it cannot be permitted to conclude the judgment of a court of justice. The construction given to the laws, by any department of the executive government, is necessarily ex parte without the benefit of an opposing argument, in a suit where the very matter is in controversy; and, when the construction is once given, there is no opportunity to question or revise it by those who are most interested in it, as officers deriving their salary and emoluments therefrom, for they cannot bring the case to a test of a judicial decision. It is only when they are sued by the government for some supposed default or balance that they can assert their rights. Their acquiescence, therefore, is almost from a moral necessity, when there is no choice but obedience as a matter of policy or duty. But it is not to be forgotten that ours is a government of laws and not of men; and that the judicial department has imposed upon it by the constitution the solemn duty to interpret the laws in the last resort; and, however disagreeable that duty may be in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender or to waive it. The present question then must be decided upon the same principle by which we ascertain the interpretation of all other laws: by the intention of the legislature, as it is to be deduced from the language and the apparent object of the statute."

The court proceeded to determine, by a critical examination of the statutes, and by careful reasoning, the meaning of the words "in any one year," and concluded that they referred, not to the fiscal, but to the official, year, and thereupon reversed a practice which had obtained in the treasury for more than twenty years.

In United States *v.* Gilmore, 8 Wall., 330, the question was whether the act of June 20, 1864, 13 Stat., 144, by increasing the pay of private soldiers, increased the officers' commutations for servants. The court said:

> "But it by no means follows from the silence of the act of 1864 in respect to the emoluments of officers that the old construction must be applied to it. The contrary inference we think is better warranted. We have already said that the correctness of the original interpretation of the earlier statutes increasing pay was at least doubtful. Constructive allowances are not entitled to favor. And it is certain, though the allowances in question, so far as made prior to the act of July, 1862, were confirmed by that act, that its prohibition of that construction in future, as applied to the act of 1861, must be taken at

> least as a legislative disapproval of the construction itself. It cannot then be assumed that, when the act of 1864 was passed, congress intended that this disapproved construction should be applied to it. We conclude, on the contrary, that the indirect effect claimed for the act of 1864, of increasing the emoluments of officers, was not contemplated by the legislature, and can not properly be given to it."

It will be observed that the point stated in the first clause of the reporter's syllabus in this case is not referred to in the opinion.

Until 1869 it was the uniform ruling of the war department that the acts of July 22, 1861, 12 Stat., 268, and August 6, 1861, 12 Stat., 326, excluded soldiers enlisted under the president's proclamation of May 3, 1861, from the bounty of $100 promised by such proclamation, unless he had served two years, or during the war if sooner ended. But in the case of United States *v.* Hosmer, 9 Wall., 432, decided in 1869, the supreme court set aside this uniform construction of the department charged with the execution of these laws, and decided that the soldier's right to the bounty was not affected by the extent of his actual service.

In Smythe *v.* Fiske, 23 Wall., 374, the construction of a clause of the tariff act of July 30, 1864, 13 Stat., 210, was involved. The words "not otherwise provided for" occur at the end of the eighth section of the act; and the question was whether they meant "not otherwise provided for" in this act of 1864, or in the acts of 1861 and 1862. The court, upon a careful analysis of the statutes bearing upon the question, concluded that the former was the correct construction, and, having adopted and announced that construction as correct, added:

> "The construction we have indicated, of these statutes, is that given to them in their practical administration by the treasury department ever since their enactment. This, though not controlling, is not without weight, and is entitled to respectful consideration."

It is provided in the act of March 3, 1863, that "any officer absent from duty, with leave, except from sickness or wounds, shall, during his absence, receive half of the pay and allowances prescribed by law and no more." From the time of the enactment of this law, in 1863, until the case of The United States *v.* Williamson, 23 Wall., 411, was decided by the supreme court, in 1874, the war department had uniformly construed it as applicable to officers ordered home, at their own request, to await orders and to report by letter to the adjutant-general of the army and to department headquarters. That case was decided against Williamson by the court of claims; but the court rendered a judgment, pro forma, in his favor to enable him to appeal. The supreme court decided in his favor, and thereby set aside a uniform construction of the war department which had obtained for more than ten years. The fact that the court of claims and the supreme court placed different constructions upon the act in question would seem to indicate that the case was not altogether free from doubt.

According to the uniform practical construction given by the war department to section 1117 of the army regulations of 1862, which regulations were confirmed by the act of July 28, 1866, an officer ordered home to await orders at his own request was not entitled to mileage. But the supreme court, in United States *v.* Phisterer, 94 U. S., 220, overruled this construction and invalidated all the practice of the war department which had obtained in accordance therewith.

From 1868 until 1877 the bureau of internal revenue uniformly construed the act of July 28, 1868, as a repeal of the rule prescribed by the act of July 13, 1866, for the allowance of commissions to collectors of internal revenue, upon taxes collected by them for articles removed from one district to a bonded warehouse in another district. But in the case of The United States *v.* Wilcox, 95 U. S., 661, the supreme court set aside this construction and invalidated all the action of the bureau, had in accordance therewith, for a period of nearly ten years.

In United States *v.* Moore, 95 U. S., 760, the supreme court, upon a scrutiny of the statute then in question, concluded that its meaning was clear, and said:

> "The difficulty has arisen from the collators not having been careful to harmonize the language of the sections. Hence the seeming conflict. But the intention of congress is clear; and that intention constitutes the law."

It happened that the secretary of the navy had adopted the construction which the supreme court, as the result of its own examination, found to be the correct construction of the statute. But the secretary's construction was not received, either as a substitute or as a basis, for the exposition of the court. The court, however, said:

> "The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons."

It is provided in section 24 of the act of July 15, 1870, 16 Stat., 320, that "the pay of acting assistant commissary shall be $100, in addition to the pay of his rank." This provision is reproduced in section 1261 of the revised statutes. According to the uniform construction given to this provision by the pay department, from its enactment in 1870 until the decision of United States *v.* Morrison, 96 U. S., 232, by the supreme court, in 1877, regimental quartermasters, when acting as assistant commissaries, were excluded from its operation; and yet neither the court of claims nor the supreme court hesitated to override this contemporaneous construction of the law by the officers charged with its execution. Considerations respecting the extent to which their decision would invalidate the past action of the pay department seem not to have been controlling considerations.

In the case of The United States *v.* Pugh, 99 U. S., 265, the court said:

> "It is also understood to have been the practice of the executive departments of the government, from the beginning, to credit the abandoned and captured fund in the treasury with the proceeds of all property captured, after July 17, 1862, and, before March 12, 1863, paid over to the quartermasters and accounted for by them in their settlements with the treasury department. No distinction was made, in this particular, between captures after March 12, 1863, and those

> before. It is a familiar rule of interpretation that, in the case of a doubtful and ambiguous law, the contemporaneous construction of those who have been called upon to carry it into effect is entitled to great respect. Edwards' Lessee *v.* Darby, 12 Wheat., 210. While therefore the question is one by no means free from doubt, we are not inclined to interfere, at this late day, with a rule which has been acted upon by the court of claims and the executive for so long a time. Besides, the interpretation which has been given to the act is in strict accordance with the well-settled policy of the government not to enforce the right of capture, during the late war, against the property of the inhabitants of the insurrectionary districts, without giving the owners an opportunity of proving, in a court of justice, that, although they were in law enemies, they were, in fact, friends of the United States."

It is enacted, in section 4820 of the revised statutes, that:

> "The fact that one to whom *a pension has been granted for wounds or disability* received in the military service has not contributed to the funds of the soldiers' home shall not preclude him from admission thereto. But *such pensioners* shall surrender their pensions to the soldiers' home, during the time they remain therein, and voluntarily receive its benefits."

From the time of the enactment of this law, in 1873, until the decision of the case of The United States *v.* Bowen, 100 U. S., 508, by the supreme court, in 1879, the officers charged with its execution gave it this uniform practical construction, viz., that it required all persons, pensioned for wounds or disability, and admitted to the soldiers' home, to surrender their pensions while inmates of the home. Certainly the words of the statutes will easily bear this construction. But the supreme court, in 1879, set aside a practical construction which had been for six years observed by the officers whose duty it was to execute the law.

In United States *v.* Temple, 105 U. S., 97, there was no abnegation of the constitutional functions of the supreme court in presence of the rulings of the treasury department. The court said:

> "Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operation. Waller *v.* Harris, 20 Wend. (N.Y.), 561; Pott *v.* Arthur, 104 U. S., 735. When the language is plain we have no right to insert words and phrases so as to incorporate in the statute a new and distinct provision. The attempt to justify the decision of the accounting officers of the treasury is based on an alleged practice, in conformity therewith, which it is said grew up in the navy department, under the act of 1835. The practice, if such there was, finds no higher warrant or sanction in the act of 1835 than in the act of 1876."

It is provided in the act of July 15, 1870, 16 Stat., p. 320, sec. 24, that—

> "there shall be allowed and paid to each and every commissioned officer, below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current year's pay for each and every term of five years of service."

This provision reappears in section 1262 of the Revised Statutes.

From the time of the enactment of this law, in 1870, until the case of Tyler *v.* The United States, 105 U. S., 244, was decided by the supreme court in 1881, that is to say, for a period of more than ten years, the war department uniformly construed this statutory provision as inapplicable to officers on the retired list. But the supreme court, affirming in 1881 the judgment of the court of claims in that case, set aside this uniform contemporaneous construction of the department charged with the execution of the law.

In Swift Company *v.* United States, 14 Ct. Cl., 483, the court of claims said:

> "But the treasury department applied the same rule, in the sale of proprietary stamps, for which purchasers furnished their own dies and designs, and allowed and paid, in stamps at their face value, the ten per cent. commission allowed by statute, which the secretary had no authority to reduce, instead of allowing the commission on the whole amount received, as now claimed. The difference is equal to ten per cent. in money on the stamps delivered, at their face value, as commissions. This rule, thus applied, has been uniformly acted upon, from the passage of the first stamp act in 1862, to the present time, and has been acquiesced in by dealers in proprietary articles, until the present action was instituted in May, 1879. More than forty millions of dollars have been collected of other parties, for stamps sold in accordance therewith. Congress has several times revised and re-enacted the statute, on which it is founded, and with a full knowledge, we may presume, of the construction adopted by the treasury department, has made no enactment to change it. Under these circumstances, whatever may be our opinion of the application of the rule in the first instance to the sale of proprietary stamps for which the proprietors furnished dies and designs, we do not feel authorized to reverse it at this late day. In reaching this conclusion we follow the principle laid down by the supreme court in Mrs. Alexander's case, 12 Wall., 177, and in Pugh's case, 99 U. S., 265, and by this court, in Hahn's case, ante 306."

In the same case, 105 U. S., 691, the supreme court reversed the opinion of the court of claims and said:

> "It is met, however, in the opinion of the court of claims, and in argument on behalf of the government here, that the contrary construction to pay these commissions in stamps at their face value has been acted upon by the commissioner of internal revenue from the beginning; has been acquiesced in by purchasers and dealers; and has never been changed by congress; and as an official practice has thus acquired the force of law; or, if not, then, at least, it was a course of dealing well known to the appellant and acquiesced in, by which it accepted stamps, at their face value, in payment of its commissions, which it is not at liberty now to open, question, and reverse. The right construction of the internal revenue acts, upon the point of the allowance of commissions to dealers in proprietary articles purchasing stamps made from their own dies and for their own use, is too clear to bring the case within the first alternative. The rule which gives determining weight to contemporaneous construction put upon a statute by those charged with its execution applies only in case of ambiguity and doubt.

What then is the rule or principle established or recognized by the supreme court in these decisions? It includes, I submit, the following requirements:

1. In order to justify a resort, by this court, to the secretary of the treasury for a rule of construction, it is necessary, not merely that the court shall find the meaning of the statute to be involved in doubt or ambiguity, but also that the alleged construction of the secretary shall, itself, be free from ambiguity and doubt; that is to say, that there shall be no doubt as to what meaning the secretary did in fact impute to the statute. Obviously if the supreme court shall be in doubt whether the secretary gave to the statute one construction, or another and different construction, the court will look in vain to the secretary for a rule of interpretation to substitute for its own judicial exposition of the statute. It would be a manifest absurdity for the court to attempt to construe a doubtful or ambiguous statute by means of a secretary's doubtful or ambiguous construction of it, to attempt to resolve one doubt or cure one ambiguity by means of another doubt or ambiguity.

2. The fact that the alleged construction was adopted must be duly established by legal methods.

3. The construction must have been one of considerable extent or volume. An isolated decision, by an executive

officer, can furnish this court no authoritative interpretation of a statute. If a rule of law is not to be settled, for this court, by a single decision of an inferior judicial tribunal, it certainly is not to be settled by a single decision of an executive officer. While the decisions of inferior judicial tribunals may perhaps cover time and space enough to become solid bases for rules of law in this court, the decisions of executive officers to have that effect must not be less general and comprehensive.

4. The construction must have been acquiesced in by those upon whom the law operated. A construction of a statute, adopted by an executive officer, but resisted by those affected by the construction, is of no greater authority, in this court, than is a decision of an inferior judicial tribunal from which an appeal is taken by a party concerned.

5. The construction of a doubtful or ambiguous statute, adopted by an executive officer, requires age to give it strength and flavor in this court. If a law, enacted on Monday, is construed by an executive officer on Tuesday, his construction, cited as authority in this court on Wednesday, will have no more weight than would the construction of an inferior judicial tribunal cited under the same circumstances.

6. The doubt which justifies the court in looking, for the meaning of a statute, beyond its words, to the construction given to it by the officers charged with its execution, must be a doubt, grave in character, confronting the judges, at the end of their judicial scrutiny of the cause, and not merely a doubt encountered on the threshold of the investigation. Doubts respecting the meaning of statutes often arise in the minds of judges, at the outset, which are cleared up as the investigation proceeds, until questions which were, at first, involved in doubt, become, at last, absolutely free from doubt. If the court, at the conclusion of an inquiry into the meaning of a statute conducted

in accordance with the rules and maxims of interpretation prescribed by law, shall entertain grave doubts respecting the meaning of the statute, then, and not till then, will the court look at the contemporaneous construction given to the statute, by the officers charged with its execution, for a rule of interpretation. If the existence of a doubt in the mind of the judge, at the commencement of a judicial investigation, would justify the judge in shutting his eyes to the letter and spirit of the statute and opening them only to the construction given to the statute by persons charged with its execution, then, in a very large proportion of cases, the courts would become mere registers of the decisions of executive officers. For, wherever there is an undecided question, there is a doubt. In every cause involving a real question there is doubt until the question involved is decided. If then mere doubt, at the outset, divests the judge of his judicial functions and substitutes for his judgment that of an executive officer, and compels him to follow the rule prescribed by the executive officer, then the judge practically ceases to be the expounder of the law in most cases.

II.

The next inquiry is whether, assuming the act of 1867 to be doubtful, the record of this case shows any fact, or state of facts, to which the rule of construction adopted by the supreme court is applicable,—whether the record shows that the secretary of the treasury has uniformly construed the statute under consideration as including, in the distribution, the surveyor of the port of entry as such, and excluding all other surveyors of the district.

The court of claims state in their opinion that there are three possible interpretations of the statute, the first extending the distribution to all the surveyors of the district, the second restricting it to the surveyor of the port where the fine, penalty, or forfeiture was incurred, and the third restricting it to the surveyor of the port of entry. And the court state explicitly and repeatedly that the secretary rejected the first and second and adopted the third of these interpretations: that the secretary decided that the distribution could not embrace all of several surveyors, but was restricted to one; that he decided that the surveyor of the port where the fine, penalty, or forfeiture was incurred, was not, as such, in any case entitled to distribution; and that he decided that the surveyor of the port of entry, as such, and he alone, was entitled to distribution.

But this statement, made by the court in the opinion, encounters decided opposition in the first finding of the court, a flat contradiction in the fifth finding, and no support in any others. The first finding is that all the fines, penalties, and forfeitures in question were incurred at the port of New York; that one-fourth part was paid to the collector, naval officer, and surveyor at the port of New York; and that this distribution was made in accordance with the uniform practice of the treasury department under the law of March 2, 1867. Now, this is not a finding that the secretary refused to extend the distribution to the surveyor of the port where the fine, penalty, or forfeiture was incurred, *as such surveyor;* nor is it a finding that he awarded it to the surveyor of the port of entry, *as such surveyor*. It is merely a finding that the secretary in practice awarded the distribution to that surveyor who was at the same time the surveyor of the port of entry and also the surveyor of the port where the fines, penalties, and forfeitures were incurred. It does not show whether the secretary awarded the distribution to the surveyor residing at New York because he was the surveyor of the port of entry, or because he was the surveyor of the port where the fines, penalties, and forfeitures were incurred. It does not show that the secretary construed the law as restricting the distribution to the surveyor of the port of entry in all cases, any more than that he construed it as restricting the distribution in all cases to the surveyor of the port where the fine, penalty, or forfeiture was incurred. This is a doubtful finding. It is ambiguous upon its face. It presents to the court a rule of interpretation drawn from the secretary's decisions in the form of a dilemma, with nothing to enable the court to know which horn of the dilemma to take. If the law requires the supreme court to follow the rule of interpretation laid down in this finding, it requires the court to follow a rule without knowing what it is.

The fifth finding is that "letters, copies of which are annexed to the claimant's petition, passed between the parties therein named, as alleged by the claimant." Among these letters is one from B. H. Bristow, secretary, marked exhibit "C," a copy of which has already been given. The secretary in this letter asserts that the question under consideration is so free from doubt that it cannot properly be submitted to the attorney-general. It would be reasonable to suppose then that the meaning of the statute must have been very clear indeed, in the mind of the secretary; that, whoever else might doubt whether the distribution should extend to all the surveyors, or should be restricted to the surveyor of the port of entry *as such*, or should be restricted to the surveyor of the port at which the fines, penalties, and forfeitures were incurred, or to some other surveyor, the secretary's mind on these questions was free from doubt. But the subsequent statement that "the surveyor mentioned in the act referred to has ever been supposed by the department to be the surveyor of the *port of entry*, the place where the fraud or offense was *committed* or *discovered*," shows that the writer of this letter did not know whether the practice had been to include in the distribution the surveyor of the port of entry as such, or the surveyor of the port at which the fraud or offense had been committed, or the surveyor of the port at which the fraud or offense had been discovered. This letter was the only evidence before the court tending to show any departmental construction of the statute of 1867. It is more doubtful, in import, than the first finding, which is in fact based upon it. It leaves the supreme court in doubt, not merely as between the surveyor of the port of entry, and the surveyor of the port where the fines, penalties, and forfeitures were incurred, but also as between these two surveyors and the surveyor of the port where the fraud or offense was discovered.

There is then in the record no definite construction of the statute, by the secretary, to take the place of the judgment of the court rendered in the exercise of those functions which pertain to it as the constitutional expounder of the laws.

If it shall be said that the findings of the court in effect show, on the one hand, that New York was a port of entry, and the port where all the fines, penalties, and forfeitures, in question, were incurred, and, on the other hand, that the secretary construed the statute to mean that the surveyor's share of the fines, penalties, and forfeitures should be paid either to the surveyor of the port of entry, or to the surveyor of the port where the offenses were committed, and that this alternative finding is sufficient, the answer will be twofold and very obvious.

In the first place, while the supreme court has, in effect, said that, when the meaning of a statute is doubtful, or ambiguous, the contemporaneous construction given to the statute by the officer charged with its execution will be entitled to respect, the court has not said, and I think will not say, that of three different constructions of the secretary, submitted by the secretary, or found by the court of claims, in a confused mass, it will assume some one to have been his preferred construction, and substitute that for the actual judgment of the court. If it be true that when the meaning of a statute is doubtful, or ambiguous, the court will permit the secretary's construction to fix the meaning of the statute for the court, it does not follow that the court will permit the secretary to offer the court three different meanings mixed together, and compel the court to adopt one of them. To construe a statute is to determine its real meaning, not to suggest several different possible meanings. If a statute is capable of three, and only three, different meanings, it is no construction of the statute to indicate these three possible meanings. What the court is to follow, if anything, is a definite construction of the secretary, not some undistinguished and undistinguishable member of a whole brood of constructions.

But in the second place the findings do not show that the secretary adopted either or both of these two constructions, one of which restricted the distribution to the surveyor of the port of entry, as such, and the other, to the surveyor of the port where the offense was committed. They only show that he either adopted one of these two constructions, or adopted a third construction which restricted the distribution to the surveyor of the port where the "offense was discovered."

Suppose then that the supreme court shall, by lot, or otherwise, decide to be governed by the last of these three constructions, to wit, the construction in favor of the surveyor of the port where the offense was discovered. Now the findings do not show that, in a single instance, the offense was discovered at the port of New York. The supreme court, therefore, will be compelled to decide that, under this third construction, the ruling of the court of claims in favor of the surveyor residing at New York has no foundation in the findings of fact.

III.

But I submit that a careful consideration of the text of the act of 1867, and of its object and effect, in the light of previous legislation, can leave no reasonable doubt that in districts having more than one surveyor all the surveyors were entitled to distribution.

I proceed to consider the points suggested by the attorney-general and by the court of claims in support of the construction which restricts the distribution to the surveyor of the port of entry. In this way I shall be able more conveniently to present the considerations which seem to me to compel the adoption of the appellant's construction of the law.

The entire legislation of congress prior to 1874, respecting the distribution of fines, penalties, and forfeitures under the customs laws, is set forth in the following sections of the acts of 1789, 1790, 1799, and 1867, all of which are to be considered for the purpose of ascertaining the meaning of the law under which this cause of action accrued. For convenience, the corresponding clauses of the several acts are numbered alike.

ACT OF JULY 31, 1789.

SEC. 38. *And be it further enacted*, That

(1.) All penalties, fines, and forfeitures recovered by virtue of this act (and not otherwise appropriated) shall, after *deducting* all proper *costs* and *charges*, be disposed of as follows:

(2.) *One moiety* shall be for the use of the *United States*, and *paid into the treasury* thereof.

(3.) The *other moiety* shall be divided into *three equal parts*,

(4.) and paid to the collector, naval officer, and surveyor *of the district* wherein the same shall have been incurred;

(5.) and in such districts where *only two* of the aforesaid officers shall have been established, the *said moiety* shall be *equally divided between them;*

(6.) and in such districts where *only one* of the aforesaid officers shall have been established, the said *moiety* shall be given *to such officer;*

(7.) *Provided, nevertheless*, That in all cases where such penalties, fines, and forfeitures shall be recovered in pursuance of information given to such collector by any person other than the said naval officer and surveyor, the *one-half of such moiety* shall be given to the *informer*, and the *remainder* thereof shall be disposed of between the *collector, naval officer, and surveyor, in manner and form as above limited and expressed.* 1 Stat., 48.

ACT OF AUGUST 4, 1790.

SEC. 69. *And be it further enacted*, That

(1.) All penalties, fines, and forfeitures recovered by virtue of this act (and not otherwise appropriated) shall, after *deducting* all proper *costs* and *charges*, be disposed of as follows:

(2.) *One moiety* shall be for the use of the *United States*, and *paid into the treasury thereof;*

(3.) the *other moiety* shall be divided into *equal parts*,

(4.) and paid to the collector and naval officer *of the district* and surveyor *of the port* wherein the same shall have been incurred, (5.) or to *such* of the said officers as there may be in the said *district;*

(6.) and in districts where *only one* of the aforesaid officers shall have been established, the said moiety shall be given *to such officer:*

(7.) *Provided, nevertheless*, That in all cases where such penalties, fines, and forfeitures shall be recovered in pursuance of information given to such collector by any person other than the naval officer or surveyor of the district, the *one-half* of such *moiety* shall be given to the informer, and the *remainder* thereof shall be disposed of between the *collector*, *naval officer*, and *surveyor*, **OR SURVEYORS**, *in manner aforesaid.* 1 Stat., 177.

ACT OF MARCH 2, 1799.

SEC. 91. *And be it further enacted*, That

(1.) all fines, penalties, and forfeitures recovered by virtue of this act (and not otherwise appropriated) shall, after *deducting* all proper *costs* and *charges*, be disposed of as follows:

(2.) *One moiety* shall be for the use of the *United States*, and be *paid into the treasury* thereof (by the collector receiving the same);

(3, 4.) the *other moiety* shall be *divided between*, and paid *in equal proportions* to, the collector and naval officer *of the district* and surveyor *of the port* wherein the same shall have been incurred,

(5.) or to *such of the said officers* as there may be in the said *district;*

(6.) and in districts where *only one* of the aforesaid officers shall have been established, the said moiety shall be given *to such officer:*

(7.) *Provided, nevertheless*, That in all cases where such penalties, fines, and forfeitures shall be recovered in pursuance of information given to such collector by any person other than the naval officer or surveyor of the district, the *one-half of such moiety* shall be given to such informer, and the *remainder* thereof shall be disposed of between the *collector, naval officer, and surveyor*, **OR SURVEYORS**, *in manner aforesaid:*

(8.) *Provided, also*, That where any fines, forfeitures, and penalties incurred by virtue of this act are recovered in consequence of any information given by any officer of a revenue cutter, they shall, after deducting all proper costs and charges, be disposed of as follows: *One-fourth part* shall be for the use of the *United States*, and paid into the treasury thereof in manner as before directed; *one-fourth part* for the *officers of the customs*, to be distributed as hereinbefore set forth; and the *remainder* thereof to the *officers of such cutter*, to be divided among them agreeably to their pay. 1 Stat., 697.

ACT OF MARCH 2, 1867.

Be it enacted, &c., That

(1.) from the proceeds of fines, penalties, and forfeitures incurred under the provisions of the laws relating to the customs, there shall be *deducted* such *charges* and *expenses* as are *by law in each case authorized* to be deducted, *and* in addition, in the case of the forfeiture of imported merchandise of a greater value than five hundred dollars, on which duties have not been paid, or in case of a release thereof upon payment of its appraised value, or of any fine or composition in money, *there shall also be deducted an amount equivalent to the duties* in coin upon such merchandise, (including the additional duties, if any,) which shall be credited in the accounts of the collector as duties received;

(2.) and *the residue of the proceeds* aforesaid shall be *paid into the treasury* of the United States, and *distributed* under the direction of the *secretary of the treasury* in the manner following, to wit, *one-half* to the United States,

(7.) *one-fourth* to the *person giving the information* which has led to the seizure, or to the recovery of the fine or penalty,

(7.) and *if there be no informer* other than the collector, naval officer, or surveyor, then to the *officer making the seizure;*

(3, 4.) and the *remaining one-fourth* to be equally divided between the *collector, naval officer*, and *surveyor*.

(5.) or *such of them as are appointed for the district* in which the seizure has been made, or the fine or penalty incurred,

(6.) or if there be *only a collector*, then to *such collector*.

(8.) But where any fine, penalty, or forfeiture incurred by virtue of the laws relating to customs shall be recovered in consequence of any information given by an officer of a revenue cutter, the proceeds thereof shall, after the legal deductions, including the deductions herein authorized, have been made, be disposed as follows: *One-fourth* to the *United States; one-fourth* to the *officers of the customs*, as hereinbefore provided; and the *remainder* to the *officers of such revenue cutter*, to be divided among them in proportion to their pay. 14 Stat., 546.

Referring to the act of 1867, the attorney-general says:

> "When the act in question was passed congress well knew that in all the collection districts in which any considerable amount of proceeds would be distributable, there were appointed, in addition to the surveyor of the port of entry, one or more surveyors at ports of delivery only. If it was intended, then, that more than one surveyor should share in the proceeds, in any one case, why did not congress use the word '*surveyors*,' which would perfectly express that intent, instead of the word '*surveyor*,' which applies only to a single officer. * * If such an intent be assumed, it must be admitted, not only that congress failed to employ such terms as would be apt and almost necessary to express it, but employed terms which would naturally and properly convey a different meaning, as is apparent from the labored effort of the claimant to adapt them to his view."

Now, in the first place, the attorney-general is wholly mistaken in his assertion that "when the act in question was passed congress well knew that, in all the collection districts in which any considerable amount of proceeds would be distributable, there were appointed, in addition to the surveyor of the port of entry, one or more surveyors at ports of delivery only." Nothing of this kind was known either to congress or to the attorney-general. Nothing of the kind was true. Of the one hundred and thirteen collection districts, which existed at the date of the passage of the act of March 2, 1867, only four had surveyors at ports of delivery as well as at the ports of entry. In not a single one of the other one hundred and nine districts was there a surveyor at a port of delivery as well as at the port of entry. Of these one hundred and nine districts, eighty had no surveyors or naval officers at all; but only collectors. Rev. Stat., 2517 to 2604. Five of the remaining twenty-nine districts had each a collector, a naval officer, and a surveyor, at the port of entry; but had no surveyor at any port except at the port of entry. These were the important districts of Philadelphia, Boston, Baltimore, San Francisco, and Charleston. Rev. Stat., 2518, 2529, 2544, 2549, 2558, 2583. Seven of them had, each, a collector and a surveyor residing at the port of entry; but had neither a naval officer nor any surveyor except the surveyor of the port of entry. These were the districts of Portland, Porstmouth, Newburyport, Gloucester, Salem, Alexandria, and Petersburg. Rev. Stat., 2523, 2529, 2553. Sixteen districts had neither naval officer nor surveyor residing at the port of entry; but had collectors, and also had surveyors at one or more ports of delivery. These were the districts of Chicago, Detroit, Galveston, Sag Harbor, Vermont, Champlain, Annapolis, Cherrystone, Tappahannock, Yorktown, Brunswick, St. John's, St. Mark's, Alabama, and Saluria. Rev. Stat., 2518, 2526, 2536, 2549, 2553, 2560, 2563, 2565, 2579, 2600, 2602. One district, Richmond, had a port of entry extending from Richmond to Bermuda Hundred, with a collector and surveyor at Richmond, one extremity of the port of entry, and another surveyor at Bermuda Hundred, the other extremity of the port of entry. Of the whole one hundred and thirteen districts only four, New York, Norfolk, Savannah and New Orleans, had surveyors both at the ports of entry and at ports of delivery.

There is, then, no ground for the assumption that "when the act in question was passed congress well knew that, in all the collection districts in which any considerable amount of proceeds would be distributable, there were appointed, in addition to the surveyor of the port of entry, one or more surveyors at ports of delivery only." And the inference drawn from this assumption is equally groundless. That inference is that, if it had been intended that more than one surveyor should share in the proceeds, in any case, congress would have used the word 'surveyors,' which would perfectly express that intent, instead of the word '*surveyor*,' which applies only to a single officer.

The fact from which this inference is drawn does not exist. The facts which did exist furnish a very obvious explanation of the reasons for the employment of the phraseology used by the legislature. Congress was enacting a general law applicable, not merely to two or three districts, but to all or any of the one hundred and thirteen collection districts in the United States. Of these one hundred and thirteen districts, only four had surveyors both at the port of entry and at ports of delivery. Many of the most important collection districts in the United States were without this dual arrangement. Manifestly, therefore, the main provision was required for the case of one surveyor, and the alternate provision for the case of several surveyors. Accordingly in the act of 1867 the main provision for distribution is this: "And the remaining one-fourth to be equally divided between the collector, naval officer, and survey*or*." The alternate provision is the following: "Or such of them as are appointed for the district in which the seizure has been made, or the fine, or penalty, incurred." The failure to use the plural word survey*ors*, in the main provision, does not imply that the legislature intended to restrict the distribution to one surveyor, in districts having more than one. On the contrary, the use of a word applicable to only four districts in a general provision intended for one hundred and thirteen would have been forced and unnatural. The alternate provision includes not only a plural arrangement for the surveyors, but also an arrangement for the collector and naval officer.

It is, at once, a substitute for the plural word survey*ors* and a provision for the collector and naval officer.

An objection to the claimant's demand was stated by the attorney-general, in the court below, in the following words:

> "The theory of such a distribution must be that a share in the forfeiture is awarded to an officer for some service in connection with, and commensurate to, the reward. It is notorious that the revenue officers at a port of entry are under a vastly greater weight of responsibiity than attaches to those employed at ports of delivery only. By far the greater portion of offenses against the revenue laws are committed at the ports of entry, and substantially all the revenue is collected thereat. When seizures are made at the port of entry, or prosecutions instituted for fines or penalties accruing there, all the labor of detection, investigation, and preparation for prosecution and trial is borne by the officers of that port, who are reasonably entitled, therefore, to the distributive share allowed by law. The surveyors of the out-ports in such case have no labor or responsbility in the matter, and no just right to participate in the allowance. It follows that the practical construction given to the law *is consonant with reason and the right of the case.*"

Now, while it is not permitted to a court to substitute for the law, as it is, something else which counsel, or even the court itself, may conceive the law ought to be, I admit that it may be legitimate, in the interpretation of an ambiguous or doubtful statute, to inquire what it ought to be in order to ascertain what it is. But, if considerations of justice or of public policy are to enter into the construction of the act of 1867, it will be impossible to uphold the construction which, in all cases, restricts the distribution to the surveyor of the port of entry, upon grounds either of justice or of public policy. The attorney-general insists that the act of 1867 secures the whole of the surveyors' share of the fine, penalty, or forfeiture, in every case, to the surveyor of the port of entry, whether the forfeiture is incurred, or the violation of law detected, at the port of entry, or at the port of delivery, or elsewhere—whether the surveyor of the port of delivery does, or does not, detect and prosecute the offense—whether the surveyor of the port of entry has, or has not, any part in the proceeding. He lays down the cast-iron rule that, in all cases whatsoever, the surveyor's share of the fine, penalty, or forfeiture goes to the surveyor of the port of entry. And he conceives this rule to be founded in justice and public policy.

It cannot be denied that the detection, at a port of delivery, of a fraud perpetrated, whether at the port of entry, or at a port of delivery, is just as valuable a service to the public as the detection of such a fraud at the port of entry. The investigation of such a fraud at the port of delivery is just as clearly a matter of public policy as is its investigation at the port of entry. The prosecution of such a fraud by the surveyor of a port of delivery is just as important a public service as its prosecution by the surveyor of the port of entry. Precisely the same considerations of public policy which require surveyors, at the ports of entry, to be alert and vigilant for the detection, investigation, prosecution, and punishment of offenses perpetrated at ports of entry, or at ports of delivery, also require surveyors, at ports of delivery, to be alert and vigilant for the detection, investigation, prosecution, and punishment of such offenses.

Nor does public policy permit one class of surveyors, any more than the other, to wink at infractions of the revenue laws perpetrated, neither at ports of entry nor at ports of delivery, but at other places; as, for example, the introduction of smuggled goods at points which are neither ports of entry nor ports of delivery.

The exclusion of surveyors of ports of delivery from the distribution withholds from them that incentive to zeal in the discovery and punishment of frauds upon the revenue, perpetrated, whether at ports of entry, or at ports of delivery, or at other ports, or places, which affords the most reliable guaranty of efficient service. It either deprives the public of their labors, in such cases, or compels them to work for nothing. The opinion that such a scheme rests upon grounds either of justice or of public policy is palpably erroneous.

The most thorough scrutiny of the working of the act of 1867, will disclose no cases in which injustice could have resulted from the practical adoption of the appellant's construction of the law. On the other hand, such a scrutiny will show that the grossest subversion of justice and public policy is the constant and inevitable result of the construction adopted by the court of claims. The cause of action accrued between June 13, 1872, and June 22, 1874. At the latter date there existed, as we have seen, one hundred and thirteen collection districts, established by law in the United States. Eighty of these districts had neither naval officers nor surveyors; but collectors only. The claimant's construction of the act could prejudice nobody in either of these eighty districts. For the law gave the whole of the distributable part of the forfeiture to the collector. There could be no adverse claimant to contest his right. Five districts had none of these officers except the collectors and naval officers and the surveyors who resided at the ports of entry. The claimant's construction of the law could harm nobody in these districts. The distributable portion of the forfeiture went, without question, to the three officers who resided at the port of entry. Molestation by adverse claimants was impossible. Seven of the districts had none of these officers except the collectors and the surveyors who resided at the ports of entry. The claimant's construction of the law could work no harm in these districts. The entire distribution went, without hindrance, to the collectors and the surveyors residing at the ports of entry.

But in the remaining twenty-one districts the restriction of the distribution to the surveyor of the port of entry would result in the gravest injustice and the most serious prejudice to the public interests. Of these, sixteen had, at the ports of entry, neither naval officers nor surveyors. They had, however, surveyors at one or more ports of delivery. In these sixteen districts the act of 1867, as construed by the claimant, would divide the distributable portion of the forfeiture among the collectors and the surveyors of the ports of delivery; but the construction adopted by the court of claims would give the whole to the collector in every case. Three of the twenty-one districts had collectors, naval officers, and surveyors residing at the ports of entry, and also surveyors residing at ports of delivery. In these districts the act of 1867, enforced according to the construction of the claimant, would have extended the distribution to all the officers of the district; but that adopted by the court of claims would have restricted the distribution to the three officers residing at the respective ports of entry. One of these twenty-one districts, Norfolk, had a collector and a surveyor residing at the port of entry and a surveyor residing at the port of delivery, but had no naval officer. The claimant's construction of the act of 1867 would include all the officers in the distribution. The construction adopted by the court of claims would restrict it to the two officers residing at the port of entry. The peculiarity of the case of the district of Richmond, the last of these twenty-one districts, has already been noticed, and will be hereafter considered.

Now the act of 1867, embodied in section 3090 of the revised statutes, is a general statute. It was not enacted for one, or two, or five of the collection districts of the United States, but for all. If, therefore, considerations of justice or policy are to enter into the interpretation of this act, those considerations are to be drawn, not from particular districts, for the benefit of particular officials, but from the country at large, from the aggregate of the districts. An exhibit of the organization of a few of the collection districts, which existed at the date of the enactment of the law of 1867, will enable the court to appreciate the evils which, under the statutory provisions about to be cited, must have attended the practical adoption of that construction which restricts the distribution to the surveyor of the port of entry. In the district of Annapolis, Annapolis was a port of entry, and Benedict, Lower Marlborough, Town Creek, Silvey's Landing, Cedar Point, Llewellensburg, Nottingham, and St. Mary's, ports of delivery. The officers were a collector, residing at Annapolis, and three surveyors, residing at Town Creek, St. Mary's, and Llewellensburg, respectively. Rev. Stat., 2548, 2549. The district of Tappahannock embraced Tappahannock, as a port of entry, and Urbanna, Port Royal, Fredericksburg, and Yeocomico, as ports of delivery. The officers were a collector, residing at Tappahannock, and four surveyors, residing, respectively, at Urbanna, Port Royal, Fredericksburg, and at or near the mouth of the Tappahannock river. Rev. Stat., 2552, 2553. In the district of Norfolk and Portsmouth, Norfolk and Portsmouth, together, were the sole port of entry, and Suffolk, Smithfield, and Hampton were ports of delivery. The officers were a collector, surveyor, and appraiser, residing at Norfolk, a surveyor residing at Suffolk, and a surveyor residing at Smithfield. Rev. Stat., 2552, 2553. In the district of Saluria, Indianola was the port of entry, and Matagorda, Copano, Lavaca, and San Antonio were ports of delivery. The officers were a collector, residing at Indianola, and three surveyors, residing at Matagorda, Lavaca, and Copano respectively. Rev. Stat., 2578, 2579. In the district of Savannah, the port of that name was the port of entry, and Augusta, Sunbury, and Hardwicke were ports of delivery. The officers were a collector, a naval officer, and two appraisers, residing at Savannah, a surveyor residing at Augusta, and also, if the president should deem it necessary, two additional surveyors, residing, respectively, at Sunbury and Hardwicke. Rev. Stat., 2559, 2560.

Section 3059 of the Revised Statutes empowers any surveyor to board and search any ship, without as well as within his own district, and, upon the discovery of any breach of the revenue laws, to seize the ship and cargo, and arrest the persons implicated; and section 3072 makes it his duty to secure and seize the offending ship and cargo. If only surveyors residing at ports of entry could participate in the distribution of fines, penalties, and forfeitures, the injustice and folly of these provisions are alike palpable and indefensible. *When the information was furnished by persons not in the revenue service* it was none the less the duty of the three surveyors residing, respectively, at Town Creek, St. Mary's, and Llewellensburg, to make the seizures; but it was the privilege of the collector residing at Annapolis to appropriate the entire distributable forfeiture. The surveyor could not take even the non-distributable quarter as seizing officer. That went to the informer when the informer was not a revenue officer. It was the duty of the four surveyors of the Tappahannock district to make the seizures; but it was the right of the collector to appropriate all the distributable forfeiture. The surveyors took absolutely nothing, either as distributees, or as seizing officers. It was the duty of the surveyors residing at Suffolk and Smithfield to make the seizures; but the collector and the surveyor residing at Norfolk, the port of entry, had the right to divide between themselves the entire distributable proceeds of the seizures. The surveyors residing at Suffolk and Smithfield took nothing, either as seizing officers, or as distributees. The surveyor residing at Augusta was in duty bound to make the seizure. But the surveyor residing at Savannah was permitted to appropriate the reward. In like manner it was the duty of the surveyors residing, respectively, at the ports of delivery, Matagorda, Lavaca, and Copano, to make the seizures. Their duty in the premises was, under the law, just as clear and imperative as the duty of the collector. And yet, because they resided at ports of delivery, the collector was entitled to rob them and to appropriate to himself the whole of the reward offered by law as an incentive to the vigilant performance of duty.

Again, under sections 3061 and 3072 it is the right and duty of every surveyor upon information given by persons not revenue officers, as well as in other cases, to stop and search any suspected vehicle, beast, or person, and upon the discovery of any fraud upon the revenue, to make seizures or arrests. According to the ruling of the court of claims the proceeds of the forfeitures, in each of the numerous districts in which the surveyors all resided at ports of delivery, were to be appropriated by the collectors. All hope of reward was withheld from the surveyors. They could take nothing, either as seizing officers, or as distributees. Certainly there could be neither justice nor policy in legislation like this.

By sections 3066 and 3072 it is made the duty of every surveyor, in cases of suspicion, to procure search-warrants and enter dwellings and other buildings, and to make seizures of merchandise concealed in violation of the revenue laws. This is just as clearly the duty of each of the surveyors residing at ports of delivery in the districts to which I have referred as of the collectors who reside, without surveyors, at the respective ports of entry. They are required to make such seizures on outside information, as well as upon the information of revenue officers. Sections 3067, 3068, 3069, and 3072 make it the duty of every surveyor to board inward-bound vessels, in any port, or within four leagues of the coast, for the purpose of demanding the manifests and searching the vessels. This duty devolves upon him when the information comes from persons who are not officers of the revenue as in other cases. In all of these cases of seizures made on outside information he is excluded from the seizing officer's share. It is plain that no public interest can be promoted by permitting the surveyor of the port of entry to deprive the surveyor of a port of delivery, who makes the seizure, of his distributable share of the forfeiture in these cases. And such legislation is as repugnant to justice as to public policy.

It is provided, by section 3082, that the offense of smuggling shall be punished by the forfeiture of the goods, and the fine of the smuggler in any sum not exceeding five thousand dollars. This offense may be perpetrated at ports of delivery and elsewhere, as well as at the ports of entry. Did the law of 1867 discourage all zeal and diligence on the part of surveyors of ports of delivery by declaring that all reward for their efforts to prevent smuggling should be appropriated by the officers residing at the ports of entry? Is an interpretation of the statute which is so subversive of public policy and so abhorrent to right to be readily adopted by the courts?

By sections 2627 and 2628 it is made the duty of every surveyor residing at a port of delivery only:

> "To visit, or inspect, the vessels which arrive in his port, and make a return, in writing, every morning, to the collector, of all vessels which have arrived from foreign ports during the preceding day; specifying the names and denominations of the vessels, the masters' names, from whence arrived, whether laden or in ballast, to what nation belonging, and, if American vessels, whether the masters thereof have, or have not, complied with the law in having the required number of manifests of the cargo on board agreeing in substance with the provisions of law;
>
> "To put on board each of such vessels one or more inspectors immediately after their arrival in his port;
>
> "To ascertain the proof, quantities, and kinds of distilled spirits imported, rating such spirits according to their respective degrees of proof as defined by the laws imposing duties on spirits;
>
> "To examine whether the goods imported in any vessel, and the deliveries thereof, agreeably to the inspector's returns, correspond with the permits for landing the same, and, if any error or disagreement appears, to report the same to the collector and to the naval officer, if any;
>
> "To superintend the lading, for exportation, of all goods entered for the benefit of any drawback, bounty, or allowance, and examine and report whether the kind, quantity, and quality of the goods, so laden on board any vessel for exportation, correspond with the entries and permits granted therefor;
>
> "To take care that no goods be unladen or delivered from any ship or vessel without a proper permit for that purpose."

Now, according to the ruling of the court of claims, if the surveyors of ports of delivery, in the performance of these important duties, obtain from persons not in the revenue service information of frauds upon the revenue, however numerous or aggravated, and make the seizures themselves, they can, in no case, recover any reward, either as distributees or as seizing officers. They can take nothing as distributees; for, in the opinion of the court of claims, only surveyors of ports of entry can take as distributees. They can take nothing as seizing officers; for no seizing officer can take as such upon a seizure made on the information of a person not in the revenue service. Such is the justice of the construction adopted by the court of claims.

Under sections 2770, 2771, and 2772 American ships may unload at all ports of delivery; but must first report at the port of entry. Foreign ships can only unload at ports of entry. If a surveyor of a port of delivery shall, upon outside information, seize a foreign ship unloading at a port of delivery, or an American ship unloading at a port of delivery without having first reported at a port of entry, and a forfeiture shall result, then, under the decision of the court of claims, the reward must go, not to the surveyor who performs the service, but to the surveyor who does not perform it. And the attorney-general insists that justice and public policy require the court to give this construction to the law.

In section 2773 it is provided that:

> "If any vessel, having arrived within the limits of any collection district, from any foreign port, departs, or attempts to depart, from the same, unless to proceed on her way to some more interior district to which she may be bound, before report or entry shall have been made by the master with the collector of some district, the master shall be liable to a penalty of four hundred dollars; and any collector, naval officer, surveyor, or commander of any revenue cutter, may cause such vessel to be arrested and brought back to the most convenient port of the United States."

For the most important and difficult services rendered to the public, under this law, upon outside information, by surveyors residing at ports of delivery, the attorney-general thinks the surveyors of the ports of delivery themselves are legally entitled to not one penny of reward. On the contrary, he thinks that the successful labors of these surveyors entitle the surveyors of the ports of entry to appropriate to themselves the entire surveyors' share. In cases where there are no surveyors residing at the ports of entry he thinks the collector and naval officer, or the collector alone, entitled to the whole. And such is the effect of the decision of the court of claims. I submit that there is neither justice nor policy in this construction of the law.

It is required by section 2774 that, within twenty-four hours after the arrival of any vessel, from any foreign port, at any port of delivery, where a surveyor resides, or as soon thereafter as the surveyor's office shall be open, the master shall, under a penalty of one thousand dollars, report, as therein prescribed, to the surveyor residing at such port of delivery. The attorney-general thinks that justice and public policy and the law all concur in withholding from the surveyors of ports of delivery all penalties recovered for violations of this provision and awarding them to the surveyors of the ports of entry, or to the collectors and naval officers, or to the collectors alone, in accordance with the decision of the court of claims.

If a surveyor residing at a port of delivery obtain outside information that a master has unloaded non-specified sea stores at such port of delivery, he may, under section 2797, enforce a forfeiture of the stores, and a penalty equal to treble their value. The court of claims hold that the consequence of such a public service is to put money in the purse of some other officer or officers, but to withhold all reward from the surveyor himself. If a surveyor residing at a port of delivery shall obtain information from persons not in the revenue service that a master is unloading from a foreign vessel merchandise not covered by a proper manifest, he may, under section 2809, enforce the forfeiture of the merchandise and a penalty equal to its value. But according to the court of claims the law studiously withholds the distributable forfeiture and penalty from the surveyor of the port of delivery and awards the whole to some one else. For such a law there can be no basis either in justice or in public policy.

Again it is provided in the act of 1867, Rev. Stat., sec. 3090, that, where the offense is discovered by an officer of a revenue cutter, or by any other person not a collector, naval officer, or surveyor, one-fourth of the proceeds of the fine, penalty, or forfeiture shall "be equally divided between the collector, naval officer, and surveyor, or such of them as are appointed for the district in which the seizure has been made or the fine or penalty incurred." In such cases, where neither the collector, nor the naval officer, nor any surveyor, detects or exposes the offense, upon what grounds of principle can the collector or naval officer claim a title to the fund superior to that of the surveyor residing at a port of delivery? With what show of right can a surveyor, residing at the port of entry, claim a title superior to that of a surveyor residing at a port of delivery? Upon what ground, of principle, could the collector, naval officer, and the surveyor residing at the port of entry, set up for wronged men or martyrs because not permitted to rob the surveyor of the port of delivery and appropriate to themselves the whole of a fund which they had done nothing to earn?

Now, it is true of many general statutes that, however just and beneficent, they will sometimes, in their practical application, work hardship to individuals. It was to be expected that the construction placed by the appellant upon the act of 1867 might, somewhere, at some time, work hardship to particular persons. But the most careful scrutiny into the operation of the law, as construed by the appellant, in the districts of New York, Norfolk, Savannah, and New Orleans, the only districts in which were appointed surveyors to reside at ports of delivery and also surveyors to reside at the ports of entry, will wholly fail to disclose any evils approximating in magnitude those which must attend the operation of the law as construed by the court of claims, even in these four districts, to say nothing of the sixteen districts in which the surveyors all resided at ports of delivery.

What wrong or hardship would have been inflicted on any man if the distribution for the district of New York had been extended during the two years covered by the appellant's demand to the two surveyors residing at the ports of delivery, instead of being restricted to the collector, the naval officer, and the surveyor residing at the port of New York. It is true that the share of each of these three officers was raised, by the exclusion of the two surveyors, from $42,599.47, to $71,219.96. But would it have been a hardship or a wrong to refuse to raise the perquisites of these officers from $21,299.73 per annum, which almost equalled the entire salary then received by the president of the United States, to $35,609.98? There were many thousands of citizens in the State of New York, as capable and honest as ever held a revenue office in that State, who would not have hesitated to incur all the hardships attendant upon the acceptance of this extra allowance of $21,299.73 per annum. It is difficult to treat seriously the assertion that the construction which the appellant places upon the statute involved injustice to the collector, naval officer, and surveyor residing at New York.

If it be said that the government, having systematically wronged other surveyors of ports of delivery by withholding their shares of forfeitures, will be chargeable with inequality and injustice, if it shall not adhere to this system, the suggestion will, of course, have no weight with this court.

If it be said that the enforcement of the payment of the debt due from the United States to this claimant will expose the United States to the hazard of being called upon for the payment of other debts due to surveyors of ports of delivery, the answer is, that the presence of the statute of limitations and the absence of the required appropriations are sufficient effectually to shield the United States from this peril, without the help of a wrong judicially inflicted upon the claimant. The act of 1867 was repealed in 1874, more than eight years ago. Only three or four surveyors of ports of delivery have instituted suits in the court of claims for the recovery of such demands. Whatever the result of their suits may be the government will not be exposed thereby to the risk of doing justice on compulsion to any other surveyors. Justice may be done to the claimant in the case at bar without involving the government in the embarrassment of being compelled to do justice to more than two or three others. Without further legislation further recoveries cannot be had. And it will be a shabby suggestion to say that if this court shall do justice in this case the example may prompt Congress to do justice in other cases.

One of the minor absurdities involved in the construction adopted by the court of claims is presented by the case of the Richmond district. One of the districts established by the revised statutes is:

> "The district of Richmond; to comprise all the waters and shores of the James river, from the junction of the James and Appomattox rivers, to the highest tide-waters of the James river, in which *the port of entry shall extend from Richmond and Manchester to Bermuda Hundred.*"

And it is provided that there shall be:

> "In the district of Richmond a collector and a surveyor, who shall reside at Richmond, and a surveyor, who shall reside at Bermuda Hundred."

The question whether the opinion of the court of claims gives the surveyors' share, in this district, to the surveyor at Richmond, one end of the port of entry, or to the surveyor at Bermuda Hundred, the other end of the port of entry, or to both of these surveyors, or to neither, would, for so small a question, involve considerable difficulty.

I have now pointed out a few of the cases in which the practical administration of the law in the sense contended for by the attorney-general would work gross injustice to large numbers of public officers charged with difficult and important duties, and would at the same time seriously prejudice the public welfare, by subjecting these officers to the discouragements inseparable from the injustice of bestowing upon others rewards due to themselves. The cases which might be exhibited are practically innumerable. It is hardly possible to consider the duties imposed or powers conferred upon surveyors residing at ports of delivery by any single section of the revised statutes without discovering a case in which the adoption of the attorney-general's construction of the law will prove equally impolitic and unjust.

IV.

The points suggested by the court of claims are now to be considered.

1. The first three propositions of the court are:

(1.) That the language of the act of 1789, making distribution to the "collector, naval officer, and surveyor *of the district*," left it doubtful which surveyor was meant in cases where there were several surveyors in the district;

(2.) That the language of the acts of 1790 and 1799, making distribution to the "collector and naval officer *of the district* and surveyor *of the port*, wherein the same shall have been incurred," removed the doubt, and restricted the distribution to the surveyor of the port where the fine, penalty, or forfeiture was incurred;

(3.) That, under the provisos of the acts of 1790 and 1799, when the fines, penalties, or forfeitures were recovered upon information given by any person other than "the naval officer or surveyor *of the district*," all the surveyors of the district were entitled to distribution.

This seems to me to be an erroneous view of the changes which the acts of 1790 and 1799 wrought in the act of 1789. I think that under the acts of 1790 and 1799 all the surveyors of the district were entitled to share in the distribution, in all cases, without regard to the sources of the information on which the proceedings were based.

The act of 1789 divided the distributable moiety, in every case, into three equal parts, and gave one of these third parts to one surveyor, who was described as the "surveyor of the district." Whoever the informer might, or might not, be, one-third of this distributable moiety, as well under the proviso, as by the terms of the body of the act, went to the surveyor of the district, whoever he was, and to no one else. The proviso merely transferred the non-distributable moiety from the government to the informer in certain cases.

Now the expression "surveyor of the district," as used in this act of 1789, was capable of four different meanings. It might have meant the surveyor of the port of entry, or the surveyor of the port where the forfeiture was incurred, or the surveyor of the port where the offense was discovered, or the surveyor who discovered the offense, wherever it was committed or discovered. If it meant the surveyor of the port of entry in all cases, the injustice of the law was of the rankest kind. Manifestly it must have been so discouraging to official vigilance as to be disastrous to the revenue service. For, no matter who detected or exposed the offense, or brought the offenders to justice, the surveyor residing at the port of delivery could expect no reward. He was compelled to see it in every case put into the purse of the surveyor residing at the port of entry. If the collector or naval officer made the discovery at a port of delivery, or at any one of the innumerable places where the offense could be perpetrated or detected, the surveyor who resided at the port of delivery was wholly ignored, although his right was always equal, and in some cases, of course, superior, to that of the surveyor who resided at the port of entry and received the whole reward. If the exposure was made by the surveyor residing at the port of delivery, he was compelled to see the reward withheld from him and given to the surveyor residing at the port of entry; and, under the proviso, when the information came from any person outside of the revenue service, whether the forfeiture was incurred or detected at a port of delivery, or at any other place in the district, the surveyor residing at the port of delivery was excluded from the distribution, although his right was of course equal to that of the surveyor who resided at the port of entry.

If, on the other hand, the words "surveyor of the district," in this act of 1789, meant the surveyor of the port where the forfeiture was incurred, then, in the first place, they meant nothing at all in case the forfeiture was not incurred at a port where a surveyor resided, but at some one of the numberless other places where it might have been incurred. In the next place, in case the forfeiture was incurred at a port where one surveyor resided, but the offense was discovered by a surveyor who resided at another port, as it might have been under the law, the act of 1789, if construed to limit the distribution to the surveyor of the port where the forfeiture was incurred, was, in its operation, obviously unjust; for then the course of distribution was to be determined, not by the merit, but by the mere residence, of the distributee. And, finally, in case the forfeiture was incurred at a place where a surveyor resided, and the proceedings were instituted upon information of the collector or naval officer, or upon outside information, this restriction of the distribution to the surveyor of the port where the forfeiture was incurred would obviously have been unjust; for that surveyor would not have been entitled to appropriate the fruits of other men's labor or vigilance any more than the other surveyors of the district.

If the "surveyor of the district" was the surveyor of the port where the offense was discovered, then, the statute was meaningless in case the offense was not discovered at a port where a surveyor resided. If the forfeiture was discovered at a port where one surveyor resided, but discovered by a surveyor who resided at another port, the restriction of the distribution to the surveyor of the port where the forfeiture was discovered would have been manifestly unjust. And if the discovery was made, at a port where a surveyor resided, by the collector, or naval officer, or upon outside information, manifestly there could have been no good reason why this particular surveyor should appropriate the surveyor's third of the moiety, to the exclusion of the others.

But suppose the fourth possible meaning of the act of 1789 to have been the true meaning. Suppose the "surveyor of the district" to have been the surveyor who discovered the offense, wherever the offense may have been committed, or discovered. No surveyor would then have been entitled to share in the distribution in case the discovery was made by the collector or naval officer, or by any other person not a surveyor.

To remedy this manifest injustice of the act of 1789 three important changes were made, two in the body of the act and one in the proviso. First, the distributable moiety, which, under the rigid provision of this act of 1789, had been divided in every case into "three equal parts," was, under the flexible provision of the acts of 1790 and 1799, divided into "equal parts," the indefinite number to become definite according to the ascertained number of lawful distributees. This provision was made in the body of the act. It was made for all cases of distribution, whether the information was furnished by revenue officers or by other persons. In the second place, having substituted a division of the distributable moiety into *any number* of equal parts for an invariable division into *three* equal parts, the legislature proceeded to provide for any number of distributees. To accomplish this they struck out the words of the act of 1789 requiring the distributable moiety of the forfeiture to be "paid to the collector, naval officer, and surveyor of the district wherein the same shall have been incurred;" and in the act of 1790 they substitued the words requiring this moiety to be "paid to the collector and naval officer of the district and surveyor of the port wherein the same shall have been incurred, or to such of the said officers as there may be in the said district." In the act of 1799 they substituted the following words:

> "And the other moiety shall be divided between, and paid in equal proportions to, the collector and naval officer of the district, and surveyor of the port wherein the same shall have been incurred, or to such of the said officers as there may be in the said district."

And, thirdly, they inserted the words "or surveyo*rs*" in the provisos of the acts of 1790 and 1799. The proviso of the act of 1789 is this: "And the remainder thereof shall be disposed of between the collector, naval officer, and surveyor, in manner and form as above limited and expressed." But the corresponding proviso in each of the acts of 1790 and 1799 is in the following words: "And the remainder thereof shall be disposed of between the collector, naval officer, and surveyor, *or surveyors*, in manner aforesaid."

Now if the provisos of these acts of 1790 and 1799 were omitted, a question might arise as to the meaning of the words "such of the said officers as there may be in the said district." I think that, even in the absence of the provisos, that question would necessarily be decided in favor of extending the distribution to all the surveyors in the district.

For, in the first place, this is the obvious import of the language used in the body of each of these acts. It seems to me to be a forced construction of the words employed to hold, as did the court of claims, that but one surveyor is embraced in the clause "or to such of the said officers as there may be in the said district." The statutes make the offices of all these surveyors identical, so far as their general powers are concerned, just as the offices of all the justices of the peace in a county are, as to their general powers, one office, in kind, whatever peculiar local duties individual justices may have to perform. There are, in some districts, several incumbents of the office of surveyor; but it is only one office, in kind, by whomsoever held. If a statute conferring certain powers upon the county judge and clerk and justice of the peace, "or such of the said officers as there may be in the county," would, in the plain significance of its words, embrace all justices, in counties having more than one, so must the analagous provisions, in the acts of 1790 and 1799, embrace all surveyors in districts having more than one.

Again, the case of three officers in one district (a collector, a naval officer, and one surveyor) is already provided for in preceding clauses in the body of each of these acts as follows: "The other moiety shall be divided into equal parts, and paid to the collector and naval officer of the district, and surveyor of the port wherein the same shall have been incurred." If, therefore, the clause "or such of the said officers as there may be in the said district," does not embrace all surveyors in districts having more than one, then, although, in terms, broad and general, it is, in effect, so narrow and particular as to have no force whatever beyond providing for cases where there are only two of these officers in a district, viz., a collector and a naval officer, or a collector and a surveyor, or a naval officer and a surveyor. Such a result places the legislature in the attitude not only of using broad and general language to express equivocally a narrow and particular meaning, but of deliberately substituting, in the acts of 1790 and 1799, words broad and general enough to embrace an indefinite number of surveyors for words in the act of 1789 expressly providing for the case of two officers.

There is a third consideration which is fatal to the construction which makes the clause "or to such of the said officers as there may be in the said district" a mere provision for the case of a district having only two officers. The act of 1789 contains three distinct and consecutive provisions for the cases of three, two, and one of these officers, respectively, as follows:

> "The other moiety shall be divided into *three equal parts*,
> and paid to the collector, naval officer, and surveyor of the district, wherein the same shall have been incurred;
> and in such districts where only *two* of the aforesaid officers shall have been established the said moiety shall be equally divided between them;
> and in such districts where only *one* of the aforesaid officers shall have been established the said moiety shall be given to such officer."

Now, in the acts of 1790 and 1799, the legislature retained the first and third of these provisions, but omitted the second, and enacted, in place thereof, this new clause, "or to such of the said officers as there may be in the said district," at the same time dividing the distributable moiety, not into *three equal parts*, but into *equal parts*, that is to say, into an indefinite number of equal parts. If congress, after dividing the distributable moiety into an indefinite number of equal parts, intended this new clause as a mere provision for the case of a district having only two officers, the legislative will was most ambiguously and clumsily expressed. Instead of retaining a phraseology, which they found ready to their hands in the act of 1789, expressing exactly what they meant, the law-makers deliberately struck out that phraseology, and substituted in its place words which, when taken in connection with the provision dividing the moiety into any number of equal parts, were not only *capable* of including the cases of districts having more than two officers, but in their most *natural and obvious* scope and meaning *must* have included the cases of such districts. From this action of the legislature only one rational inference is possible; and that is, that it was the legislative intent to extend the distribution to all the surveyors of the district.

But if the provisions contained in the body of the act of 1790, or of the act of 1799, could possibly leave doubtful the question whether the distribution extended to all the surveyors in districts having more than one, that doubt would be effectually removed by the provisos of these acts. A comparison of the act of 1789, with the acts of 1790 and 1799, shows that the differences, between the provisos of the latter two and the proviso of the former, are such as are necessitated by the theory that, while the act of 1789 only extends the distribution to one surveyor in a district, the acts of 1790 and 1799 extend the distribution to all the surveyors in any district having more than one. Upon this theory the changes in the body of each of the acts correspond exactly with the changes in the provisos. The act of 1789, in the body thereof, divides the distributable moiety into only three parts in any case; and makes distribution to only three officers, at the most, in any district. But the acts of 1790 and 1799, in the bodies thereof, divide the distributable moiety into an indefinite number of equal parts; and make the distribution to as many officers as there are in the district. And, accordingly, while the proviso of the act of 1789, in cases of forfeitures recovered on outside information, limits the distribution to one survey*or*, in the singular number, the provisos of the acts of 1790 and 1799 extend the distribution to several survey*ors*, in the plural number. There is no rational explanation of this correspondence between these changes in the bodies of the several acts and the changes in their respective provisos except that which is to be found in the theory that, while the act of 1789 restricts the distribution to *one* surveyor in a district, the acts of 1790 and 1799 extend the distribution to *all* the surveyors of the district.

Again, the proviso of the act of 1790 and the first proviso of the act of 1799, which are identical in language, relate to cases in which fines, penalties, and forfeitures are "recovered in pursuance of information given to the collector by any person other than the naval officer or surveyor *of the district*." It transfers one-half of the distributable moiety to the informer in such cases. This is the object of the proviso. In this proviso it is declared that one-half of the moiety shall be given to the informer, and "the remainder shall be disposed of between the *collector, naval officer, and surveyor or surveyors in manner aforesaid.*" If this proviso had ended with the words "*or surveyors,*" it would even then be clear that the use of the words "or surveyors" was a legislative declaration that the preceding words "or to such of the said officers as there may be in the said district," embraced several surveyors, whenever there were several surveyors in the district. But the addition of the words "in manner aforesaid" makes this doubly certain. For the proviso in this complete form is a legislative declaration that the distribution "to the collector, naval officer, and surveyor, or *surveyors,*" is the same as the distribution provided for in the preceding clause. It is a declaration that the distribution provided for in the clause preceding the proviso, which is the distribution "in manner aforesaid," is not restricted to one of several surveyors in the same district, but is a distribution "to the collector, naval officer, and *surveyor or surveyors*"—that is to say, that it embraces as many surveyors as there may be in the district. It is a legislative declaration that the use, in the body of the act, of the word survey*or*, in the singular number, coupled with the words "or to such of the said officers as there may be in the said district," extends the distribution to several surveyors in districts having several surveyors. And while a legislative construction, given to a statute after its enactment, has no retroactive operation, such a construction, incorporated in the statute itself, is just as valid as any other part of it.

The court of claims decided that the provisos of the acts of 1790 and 1799 extended the distribution to all the surveyors in the cases specified in the provisos, that is to say, in cases in which the recoveries were made on information given "by any person other than the naval officer or surveyor of the *district*." But that court held also that the term "surveyor of the port" was used, in the body of the act of 1790, and in the body of the act of 1799, in contradistinction to the term "surveyor of the district," which is used in the body of the act of 1789; and that, as a consequence, although, under the provisos of the acts of 1790 and 1799, distribution was made to all the surveyors of the district, in cases in which the information was given "by any person other than the naval officer or surveyor of the *district*," nevertheless, in all cases, in which the information was given by the naval officer, or surveyor *of the district*, the distribution was, so far as the surveyor's share was concerned, restricted to the surveyor of the port where the fine, penalty, or forfeiture was incurred.

But in this the court disregarded the obvious and necessary inference that the legislature, by using indifferently, in the acts of 1790 and 1799, the terms "surveyor of the port" and "surveyor of the district," excluded the possibility of the distinction based by that court upon the use of the term "surveyor of the port," in the body of each of these acts.

In the next place, if the term "surveyor of the port," in the body of the act of 1790, is to be contradistinguished from the term "surveyor of the district," in the body of the act of 1789, then *a fortiori* is the term "surveyor of the district," in the proviso of the act of 1790, to be contradistinguished from the term "surveyor of the port," in the body of the act of 1790. We have then this ludicrous result that whenever the "surveyor of the port" (who, in the view of the court of claims, is a "person other than the surveyor of the district") is the informer, he receives, under the act of 1790, not only the informer's fourth, but also his own distributive share as one of the surveyors; but whenever "the surveyor of the district" is the informer, he not only does not receive the informer's fourth, but even loses the distributive share which he would take, as surveyor, if the "surveyor of the port" were the informer. If it shall be suggested that, while the words "of the port," which qualify the word "surveyor," in the body of the act of 1790, and of the act of 1799, are full of meaning, the words "of the district," which qualify the word "surveyor" in the provisos of those acts, are without significance, because inadvertently transferred from the proviso of the act of 1789, a reference to the proviso of the act of 1789 will effectually dispose of such a suggestion. In the proviso of the act of 1789, the words "of the district" do not qualify the word "surveyor"—do not occur at all. The word "surveyor" stands alone. The words "of the district," therefore, were not inadvertently copied from the proviso of the act of 1789 into the provisos of the acts of 1790 and 1799, but were actually inserted for the first time in the proviso of the act 1790, and transferred therefrom to the proviso of the act of 1799.

But this construction of the acts of 1790 and 1799, which extends the distribution to all the surveyors in districts in which there are more than one, is supported, not only by the clear terms used in the body of each of these acts, and the explicit language of the provisos, but also by the most cogent reasons to be found in the object for which the provisos were framed. That object was to transfer to the *informer*, in case he was not the naval officer of the district, or a surveyor of the district, one-half of the distributable moiety which was allotted to the revenue officers in case the informer was such naval officer or surveyor. It was no part of the intent of the legislature to change the direction of the other half of the distributable moiety. The legislature, in the proviso itself, explicitly declared that the other half of the distributable moiety was to be distributed in the manner already prescribed,—that it was to be "disposed of between the collector, naval officer, and surveyor, or surveyors, in manner aforesaid." Nor was there any reason or excuse for a difference in the mode of disposing of this other half of the distributable moiety in the two cases. So far as that was concerned it was absolutely immaterial to the rights and equities of the revenue officers whether the informer was, or was not, a naval officer or surveyor,—whether the case came within the provisions embraced in the body of each of these acts, or within the terms of the provisos. If the surveyor who resided at the port of entry was, as the court of claims concede, entitled to distribution, when the informer was a stranger to the revenue service, so also was he entitled, on the same grounds of right, to distribution when the informer was the naval officer, or another surveyor. So, also, if the surveyor of a port, whether of entry or delivery, at which the forfeiture was not incurred, was not entitled to distribution, in case the informer was a naval officer, or another surveyor, for the same reason he was not entitled to distribution when the informer was a stranger.

There is a fourth objection to the construction given by the court of claims to the acts of 1790 and 1799. It is based upon the second proviso of the act of 1799, which proviso has not yet been considered. The court of claims held that, under the acts of 1790 and 1799, all the surveyors of the district were entitled to distribution when the informer was not a naval officer, or surveyor of the district; but only one surveyor was entitled to distribution when the informer was a naval officer, or surveyor of the district. This position is refuted by the second proviso of the act of 1799. The body of the act of 1799 is identical in purport and almost identical in language with the body of the act of 1790. The first proviso of the act of 1799 is absolutely identical with the sole proviso of the act of 1790. The second proviso of the act of 1799 is in these words:

> "That where any fines, forfeitures, and penalties, incurred by virtue of this act, are recovered in consequence of any information given by any officer of a revenue cutter, they shall, after deducting all proper costs and charges, be disposed of as follows: One-fourth shall be for the use of the United States and paid into the treasury thereof, in manner as before directed; one-fourth part for the officers of the customs, *to be distributed as hereinbefore set forth;* and the remainder thereof to the officers of such cutter, to be divided among them agreeably to their pay."

If the court of claims did not err in holding that one mode of distribution, embracing only one surveyor, was prescribed in the body of each of these acts, and that another mode, embracing all the surveyors, was prescribed in the sole proviso of the act of 1790 and in the first proviso of the act of 1799, then Congress placed the second proviso in a condition of ambiguity which the grossest carelessness could not explain and nothing could justify. For then, in cases where officers of revenue cutters were informers, it was left doubtful whether the distribution was to be made in the mode held by the court of claims to have been prescribed in the body of the act, or in the mode held by that court to have been prescribed in the first proviso — that is to say, whether all the surveyors of the district, or only one, could make lawful claim to share in the distribution. If, in this respect, the mode of distribution prescribed in the body of the act differed from that prescribed in the first proviso, it was left impossible to decide which of those modes of distribution was referred to by the words "one-fourth part for the officers of the customs, to be distributed *as hereinbefore set forth*," which appear in the second proviso. I submit that this second proviso presents in effect an unmistakable legislative declaration that these acts, so far as the number of surveyors entitled to shares is concerned, provide for only one mode of distribution.

It will be impossible to fortify the erroneous interpretation which the court of claims gave to the acts of 1790 and 1799 by an appeal to the construction given by the officers intrusted with the execution of those statutes. For, under the act of 1790, there were thirteen districts having more than one surveyor, to wit, the districts of Salem and Beverly, Newport, Providence, New London, New York, Cedar Point, Norfolk, Bermuda Hundred, Yorktown, Newbern, Edenton, Camden. Under the act of 1799 there were seventeen, including those above mentioned, and also the districts of Middletown, Champlain, Oswego, and Niagara.

1 Stat., 145 to 151, 628 to 636. And, under those acts, the distributable moiety *was not paid into the treasury* for distribution, as under the act of 1867, but was distributed by the officers themselves. The practice in one, or two, or a half-dozen of the districts, whether uniform or diverse, could have very little weight with this court, even if shown in the findings of the court of claims. But the findings do not, nor does the proof, show the practice in a single one of these districts.

Assuming that I have, in opposition to the opinion of the court of claims, established the position that the acts of 1790 and 1799, by their terms, extended the distribution to all the surveyors in districts having more than one, I submit that the same considerations, which necessitate this construction of the acts of 1790 and 1799, also necessitate the same construction of the act of 1867. The following are the corresponding provisions of the three acts:

ACT OF AUGUST 4, 1790.

(2.) *One moiety* shall be for the use of the *United States*, and *paid into the treasury thereof;*

(3.) the *other moiety* shall be divided into *equal parts*,

(4.) and paid to the collector and naval officer *of the district* and surveyor *of the port* wherein the same shall have been incurred,

(5.) or to *such* of the said officers as there may be in the said *district;*

(6.) and in districts where *only one* of the aforesaid officers shall have been established, the said moiety shall be given *to such officer.*

ACT OF MARCH 2, 1799.

(2.) *One moiety* shall be for the use of the *United States*, and be *paid into the treasury* thereof, by the collector receiving the same;

(3, 4.) the *other moiety* shall be *divided between*, and paid *in equal proportions* to, the collector and naval officer *of the district* and surveyor *of the port* wherein the same shall have been incurred,

(5.) or to *such of the said officers* as there may be in the said *district;*

(6.) and in districts where *only one* of the aforesaid officers shall have been established, the said moiety shall be given *to such officer.*

ACT OF MARCH 2, 1867.

(2.) and *the residue of the proceeds* aforesaid shall be *paid into the treasury* of the United States, and *distributed* under the direction of the *secretary of the treasury* in the manner following, to wit, *one-half* to the United States,

> (3, 4.) and the *remaining one-fourth* to be equally divided between the *collector*, *naval officer*, and *surveyor*,
> (5.) or *such of them as are appointed for the district* in which the seizure has been made, or the fine or penalty incurred,
> (6.) or if there be *only a collector*, then to *such collector*.

If the acts of 1790 and 1799 extend the distribution to all the surveyors, in districts having more than one, so also does the act of 1867. That the acts of 1790 and 1799 have that effect is made clear by the provisions contained in the body of each of these acts, and is made doubly certain by the legislative declaration made in their provisos. And that declaration is not only a valid construction of the acts of which it is a part; but it fixes, for this court, the meaning of the same language in the subsequent act of 1867.

2. It is stated in the opinion of the court of claims that—

> "The only other view which could be presented was that the surveyor, at the port of entry, alone was designated, or intended to be designated; and this was supported by the fact that this surveyor had a position of much *greater importance* and responsibility than that of surveyors of ports of delivery, and *was regarded* as the *principal* surveyor of the district, and that nearly all fines, penalties, and forfeitures were incurred at ports of entry."

Now, if the construction of the act of 1867, which has been adopted by the court of claims, affected only the four districts of New York, Norfolk, Savannah, and New Orleans, which alone had each a surveyor at the port of entry and also, at the same time, one or more surveyors at the ports of delivery, even then it would be manifest injustice, in cases in which neither surveyor had rendered any service, to award *the whole* of the surveyor's distributive share of the forfeiture to the surveyor residing at the port of entry, on the ground that his office was one of *greater importance* and responsibility than that of the surveyor residing at the port of delivery only.

But when it is shown that such a construction deprives surveyors of ports of delivery in the districts of New York, Norfolk, Savannah, and New Orleans, of their shares of the forfeitures in all possible cases, in which neither surveyor renders service, not one-tenth of its hardship and injustice is exposed. The law of 1867 gives no reward to the informer, as such, if he be the collector, naval officer, or surveyor. It awards "one-fourth to the person giving the information which has led to the seizure, or to the recovery of the fine, or penalty, and, if there be no informer other than the collector, naval officer, or surveyor, then to the officer making the seizure." In all cases where the information, which leads to a seizure, or to the recovery of a fine, or penalty, is obtained and communicated by a surveyor of a port of delivery, whether the fine, penalty, or forfeiture be incurred at the port of entry, or at a port of delivery, or at any other place within the district, or within four leagues of the shore, this surveyor of the port of delivery, who obtains and furnishes the information, if it be not a case in which he can make a seizure, is compelled, under this construction, not only to submit to a deprivation of the informer's fourth, but also to see the whole surveyor's share of the distributable fourth go into the purse of the surveyor of the port of entry, who had no agency in the detection of the offense or in the seizure. It is only in a case where a seizure is possible, and where the surveyor of the port is allowed to make it, that the utmost vigilance and zeal on his part can secure any reward; and the reward secured in that case is not a participation in the surveyor's distributive share, which the surveyor of the port of entry may receive, nor an informer's share, which an unofficial informer may receive, but only the share of the seizing officer, which he may receive in a case where he is permitted to make a seizure. In the innumerable cases of fines and penalties where no seizures are possible the surveyor of the port of delivery is absolutely without hope of reward of any kind.

But then, when it is considered that there were, at the time of the enactment of the law of 1867, sixteen districts in which were collectors at the ports of entry, and surveyors not at the ports of entry, but only at ports of delivery, all of whom, under this construction of the act of 1867, would in all cases have been excluded, not only from the possibility of receiving the informer's fourth, but also from any participation in the distributable fourth of the revenue officers, it will be easy to appreciate the difficulty of defending this construction of the act on any such grounds as the superior importance of the surveyor of the port of entry, or the larger proportion of forfeitures incurred at such ports. It will be easy to perceive the injustice of setting up the superior dignity of the surveyor of the port of entry as a pretext for the adoption of an iron rule, which robs the surveyors of ports of delivery in sixteen districts in which there are no surveyors of ports of entry to sustain the dignity on which the rule is based.

3. The next propositions of the court of claims are the following:

> "In this view the words 'or such of them as are appointed for the district,' following 'collector, naval officer, and surveyor,' were not supposed to enlarge the meaning of surveyor to the plural sense, as it could not so enlarge the meaning of collector, or naval officer, because there was but one of each in any district, but were used rather to express the same meaning, in more concise language, as the words in the act of 1789, to wit, 'where only two of the aforesaid officers shall have been established, the said moiety shall be equally divided between them, and in such districts where only one of the aforesaid officers shall have been established the said moiety shall be given to such officer,' recognizing in no case more than one collector, one naval officer, and one surveyor."

In the first place it is to be observed that this supposed "concise form," or condensation, of the two provisions of the act of 1789, which relate respectively to the case where two of the officers are established and to the case where only one is established, is followed by a substantial repetition of the second provision. The clause which immediately succeeds this "concise form" is the following: "or if there be only a collector, then to such collector." According to the theory of the court of claims, therefore, the provision relating to the case of one officer is, in the act of

1867, first condensed with the provision relating to two officers into a new form, and is then repeated substantially in its old form. If congress, in the enactment of the clause "or such of them as are appointed for the district," in the act of 1867, was seeking a more "concise form" of the two provisions of the act of 1790 which relate respectively to the case of two officers and to the case of one officer, obviously the proper thing to do was to halt when the "concise form" was complete, and not proceed to repeat the second provision.

Again, it happened that, at the date of the enactment of the law of 1867, only four of the one hundred and thirteen districts had surveyors both at the ports of entry and at ports of delivery. It happened also that no district then had more than one naval officer. But if some of the collection districts had had two, or more, naval officers, could it have been claimed that the words "or such of them as are appointed for the district" did not embrace all the naval officers appointed for the district, but were restricted to the single naval officer who resided at the port of entry? If this construction would then have been inadmissible as to naval officers, how is it admissible as to surveyors now?

But, finally, the explanation of the adoption of the peculiar phraseology of the act of 1867 is very apparent. The act of 1789 contained three distinct clauses providing, respectively, for the case of three officers, the case of two officers, and the case of one officer. The following are the words of these clauses:

> "The other moiety shall be divided into three equal parts, and paid to the collector, naval officer, and surveyor of the district wherein the same shall have been incurred;
>
> and in such districts where *only two* of the aforesaid officers shall have been established the said moiety shall be equally divided between them;
>
> and in such districts where only one of the aforesaid officers shall have been established the said moiety shall be given to such officer."

This arrangement entirely satisfied the requirements of the act of 1789; because, under that act, the maximum number of equal parts into which the distributable moiety was divisible was three, and the maximum number of possible distributees was three. But the act of 1790 made the maximum number of equal parts, into which the distributable moiety was divisible, indefinite, and, accordingly, made the maximum number of distributees indefinite. To meet the requirements of this statute it was necessary to modify the second clause so that it might embrace, not only the case of two officers, but also the case of four or more. This precise modification was accordingly made in the act of 1790, in which provision was made, first, for the case of three officers; second, for the case of an indefinite number of officers; and, third, for the case of one officer. The language is this:

> "The other moiety shall be divided into equal parts, and paid to the collector and naval officer of the district, and surveyor of the port, wherein the same shall have been incurred;
> or to such of the said officers as there may be in the said district;
> and in districts where only one of the aforesaid officers shall have been established the said moiety shall be given to such officer."

The same provisions are made, in the same language, and for the same reasons, in the act of 1799.

The same provisions are transferred to the act of 1867. The same reasons required their presence in that act. The language was slightly modified, but its effect was not changed. The words of the act of 1867 are the following:

> "And the remaining one-fourth to be equally divided between the collector, naval officer, and surveyor;
> or such of them as are appointed for the district in which the seizure has been made, or the fine and penalty incurred;
> or if there be only a collector, then to such collector."

The reason for the substitution of the concluding words "or if there be only a collector, then to such collector," in place of the words "and in districts where only one of the aforesaid officers shall have been established the said moiety shall be given to such officer," is obvious. The laws provided a collector for every district. If, then, in any district, there was but one officer established, that officer was necessarily a collector. The substituted words, therefore, while less awkward than the others, were more precise in their meaning.

4. The court of claims also said:

> "With this construction congress never interfered while the law was in force; and all parties concerned seem to have acquiesced therein until its correctness was drawn in question by the claimant, and the surveyor at Albany, a few months before the repeal of all provisions on the subject."

Now, inasmuch as the court of claims has failed to find whether the secretary decided in favor of the surveyor of the port of entry, or in favor of the surveyor of the port where the offense was committed, or in favor of the surveyor of the port where the offense was discovered, that is to say, has failed to find what the secretary did in fact decide, the presumption that the senators and representatives had any better success would seem to be a most violent presumption. Indeed it is doubtless literally true that, to this day, not ten of the many hundreds who have served in the two houses of congress since the enactment of the law of 1867 ever had the slightest information on this subject. But suppose congress to have been more fortunate than the court of claims, and to have ascertained some precise construction put upon the act by the secretary or by his subordinates. Certainly the national legislature is not to be forced to the alternative of either submitting to the repeal, annulment, or amendment, of its enactments by departmental construction, or playing battledoor and shuttlecock with the executive departments, by interposing an act of congress in the way of each new erratic ruling. But then the law of 1867 was not a long-lived act. It was repealed in 1874.

There is neither finding nor proof that any body ever acquiesced in any construction of the act of 1867, by the secretary, however doubtful or ambiguous; and it was certainly no part of the claimant's case either to aver or to prove such acquiescence.

5. The court of claims suggest that the presence of the plural word survey*ors* in the provisos of the acts of 1790 and 1799, and its absence from the act of 1867, seem to restrict the distribution, under the act of 1867, to a single surveyor.

But, in the first place, as I have shown, it was not the use of the plural expression "or surveyors," in the provisos of the acts of 1790 and 1799, which extended the distribution to all the surveyors, whether in cases where naval officers or surveyors were informers, or in cases where other persons were informers. I have already indicated some of the difficulties and inconsistencies which would have attended a construction restricting the distribution to one surveyor in cases where the naval officer or surveyor was the informer, even if the plural expression "or surveyors" had not appeared in the provisos of those acts.

In the second place, the explanation of the non-appearance of the plural expression "or surveyors," in the act of 1867, seems to me to be very different from that assigned in the opinion of the court of claims. The provision for the distribution in all cases where the information was given by the naval officer, or surveyor, of the district was made *in the body* of the act of 1790. The provision for the cases where the information was given by other persons was made *in the proviso*, which, in such cases, transferred one-half of the distributable moiety to the informer, and gave the other half to the "collector, naval officer, and *surveyor or surveyors in manner aforesaid.*"

In like manner the provision for the distribution in all cases where the information was given by the naval officer, or surveyor, of the district was made in the body of the act of 1799. The provision for the cases where the information was given by persons other than these officers, except officers of revenue cutters, was made in the first proviso of the act of 1799, which gave one-half of the distributable moiety to the informer, and the other half to "the collector, naval officer, and *surveyor or surveyors in manner aforesaid.*" The cases in which the information was given by officers of revenue cutters were provided for in the second proviso, which declares that in such cases "one-fourth part shall be for the use of the United States and paid into the treasury thereof, in manner as before directed; one-fourth part for the officers of the customs, to be distributed as *hereinbefore set forth;* and the remainder thereof to the officers of each cutter, to be divided among them agreeably to their pay."

But in the act of 1867 all the provisions on this subject are systematically codified *in the body* of the act and the superfluous verbiage of the provisos is omitted. So the repetition of these provisions in the form of provisos in the act of 1867 was unnecessary, and would have been absurd. The words "*or surveyors*," found in the proviso of the act of 1790 and in the first proviso of the act of 1799, and nowhere else, disappeared because the provisos themselves disappeared and left nothing on which to hang these words. If the provisos themselves had been retained and these words omitted there might have been some weight in the suggestion of the court of claims. Suppose that congress, in order to make clear its purpose to extend the distribution to all the surveyors of the district, had appended to the act of 1867 the proviso of the act of 1790, including the words "or surveyors." The result would have been ridiculous.

In the third place, as we have seen, the proviso of the act of 1790 is a legislative declaration that the use, in the body of that act, of the word survey*or*, coupled with the words "or to such of the said officers as there may be in the said district," extends the distribution to several surveyors in districts having several surveyors. It is obvious that on precisely the same grounds the use of the word survey*or* in the act of 1867, coupled with the words "or such of them as are appointed for the district," extends the distribution to several surveyors in districts having several surveyors.

6. The opinion of the court of claims contains the following statement:

> "The claimant appears to have made no further objections until March 3, 1877; and he never gave notice that he intended to have the matter contested in court, nor asked the secretary to retain the money in his control until a judicial determination could be had, but rather submitted to the adverse decision against him until May, 1877, when he filed his first petition in this case."

It is true that the findings of the court of claims do not show that the claimant repeated his demands before March 3, 1877. On the other hand it is also true that the findings do not show that he did not repeat his demands daily before that time. But all this is immaterial. It was no part of the claimant's case to show such persistent importunity of the secretary. It was not necessary for him to make even one demand. This court so held in Clyde *v.* United States, 13 Wall., 38. A failure to pursue the secretary would no more have worked a forfeiture of this demand than would a failure of any ordinary creditor to harass his debtor have released the debt.

V.

Recapitulating the considerations which I have presented in support of the claimant's construction of the act of 1867, and in opposition to that adopted by the court of claims, I submit the following propositions:

1. The rule which, in the case of a doubtful or ambiguous law, accords respectful treatment to the contemporaneous construction of the secretary, or other officer charged with the execution of the law, includes these amongst other requirements:

(1.) The precise construction adopted by the secretary, or other officer, charged with the execution of the law, must have been clearly ascertained.

(2.) Such construction must have been ascertained by legal methods.

(3.) It must have been of sufficient extent or volume.

(4.) It must have been acquiesced in by those upon whom the law operated.

(5.) It must have had sufficient age.

(6.) The doubt, which justifies the court in looking for the meaning of the statute, beyond its words, to the construction given to it by the officers charged with its execution, must be a doubt, grave in character, entertained by the court at the end of a judicial scrutiny of the cause, and not merely a doubt encountered on the threshold of the investigation.

2. The record does not show that the secretary of the treasury construed the act of 1867 as restricting the distribution to the surveyor of the port of entry.

(1.) The first finding of the court of claims does not show that the secretary construed this act as restricting the distribution to the surveyor of the port of entry, or that he refused to extend the distribution to the surveyor of the port where the fine, penalty, or forfeiture was incurred.

(2.) The secretary's letter, referred to in the fifth finding of the court of claims, contains the statement that "the surveyor mentioned in the act referred to has ever been supposed, by the department, to be the surveyor of the *port of entry*, the place where the fraud or offense was *committed*, or *discovered*. And this statement shows that the writer of the letter did not know whether the practice had been to include in the distribution the surveyor of the *port of entry*, as such, or the surveyor of the port at which the fraud or offense had been *committed*, or the surveyor of the port at which the fraud or offense had been *discovered*. It leaves the supreme court in doubt, not merely as between the surveyor of the port of entry and the surveyor of the port where the fine, penalty, or forfeiture was incurred, but also as between these two surveyors and the surveyor of the port where the fraud, or offense, was discovered.

(3.) A finding of three different departmental constructions, in a confused mass, is not the finding of any construction which the law permits the supreme court to substitute for its own judgment.

(4.) The findings do not show that, in a single instance, the offense was discovered at the port of New York. If, therefore, the supreme court shall adopt the third construction of the secretary, which restricts the distribution to the surveyor of the port "where the fraud or offense was discovered," the decision of the court of claims, in favor of the surveyor of the port of New York, will have no basis in the findings of fact.

3. A careful examination of the act of 1867, in the light of prior legislation, can leave no reasonable doubt that in districts having more than one surveyor all the surveyors were, under its provisions, entitled to distribution.

(1.) Of the one hundred and thirteen collection districts, which existed at the date of the enactment of the law of 1867, only four had surveyors at ports of delivery as well as at the ports of entry. These were the districts of New York, Norfolk, Savannah, and New Orleans. Not one of the districts of Philadelphia, Boston, Baltimore, San Francisco, Portland, Charleston, Chicago, Detroit, Newburyport, Gloucester, Salem, Petersburg, Alexandria, Galveston, and Annapolis, had a surveyor at a port of delivery and also a surveyor at the port of entry. The act of 1867 was a general law enacted, not for four districts only, but for one hundred and thirteen. The main provision was, therefore, obviously required for the case of districts having only one surveyor, and the alternate provision for the case of districts having several surveyors.

Accordingly in the act of 1867 the main provision for distribution is: "and the remaining one-fourth to be equally divided between the collector, naval officer, and survey*or*." The alternate provision is: "or such of them as are appointed for the district in which the seizure has been made, or the fine or penalty incurred."

(2.) The failure to use the plural word survey*ors*, in this main provision, does not imply that the legislature intended to restrict the distribution to one surveyor in districts having more than one. On the contrary, the use of a word applicable to only four districts, in a main provision intended for one hundred and thirteen, would have been illogical. And the alternate provision, which, as to the surveyors, is the plural provision, shows that the legislature did not intend to restrict the distribution to one surveyor in districts having more than one.

4. If considerations of justice, or public policy, are to enter into the construction of the act of 1867, it will be impossible to uphold the construction, which restricts the distribution, in all cases, to the surveyor of the port of entry, upon grounds either of justice or of public policy.

(1.) The detection and investigation, at ports of delivery, of frauds perpetrated, whether at ports of entry, or at ports of delivery, or at other ports or places, are just as valuable public services as are their detection and investigation at ports of entry. The prosecution of such frauds, by surveyors of ports of delivery, is just as valuable a public service as is their prosecution by surveyors of entry. Precisely the same considerations of public policy which require surveyors of ports of entry to be alert and vigilant also require surveyors of ports of delivery to be alert and vigilant. And to rob surveyors of ports of delivery, who do render the service, for the benefit of surveyors of ports of entry who do not render it, is clearly as unjust as to rob the latter for the benefit of the former.

(2.) The practical adoption of the appellant's construction of the act of 1867 worked no injustice in any of the eighty districts which had neither naval officers, nor surveyors, but collectors only. The collectors received the whole of the distributable fourth part with no adverse claimants to contest their rights. It worked no injustice in either of the five districts which had collectors and naval officers, and surveyors at the ports of entry only. The distributable fourth part went to the three officers who resided at each port of entry. It worked no injustice in either of the seven districts which had no officers except the collectors and the surveyors who resided at the ports of entry. The entire distribution went of course to those officers.

(3.) In the remaining twenty-one districts the practical adoption of the appellant's construction of the act of 1867 resulted in no injustice or hardship. But the practical enforcement of the construction adopted by the court of claims must have been attended by constant and inevitable wrong and hardship. For the statutes imposed upon surveyors of ports of delivery more than twenty classes of important duties, the performance of which might result in fines and penalties or forfeitures; and they would have been compelled in all these cases to see the reward of their labors appropriated by officers who had rendered no service to entitle them thereto.

(4.) No wrong or hardship would have been inflicted on the collector, naval officer, or surveyor, residing at the port of New York, if the secretary of the treasury had paid them, in addition to their salaries, the sum of $21,299.73 per annum, each, as *perquisites*, instead of $55,609.98.

5. The suggestion that the government, having systematically wronged other surveyors of ports of delivery, by withholding their shares of forfeitures, will be chargeable with inequality and injustice, if it shall not adhere to this system, can have no weight with the court.

6. The enforcement of the payment of the debt due from the United States to the claimants, (three or four in number,) whose cases are now pending, will not expose the United States to the peril of being called upon for payment

in other similar cases without additional legislation. The statute of limitations effectually shields the government from this peril.

7. The suggestion that if this court shall do justice in this case the example may prompt congress to do justice in other like cases presents no consideration which can legitimately influence this court.

8. The acts of 1790 and 1799 extend the distribution to all the surveyors in districts having more than one. And the considerations which necessitate such a construction of the acts of 1790 and 1799 necessitate the same construction of the act of 1867.

9. The greater comparative importance and responsibility of the position of the surveyor residing at the port of entry can not justify the absolute exclusion of the surveyor of the port of delivery from participation in the distribution, even in the four districts having surveyors both at ports of entry and at ports of delivery. It is impossible to overestimate the injustice of setting up the superior dignity of the surveyor residing at the port of entry, as a pretext for the adoption of an iron rule which robs the surveyors of ports of delivery in sixteen districts which have no surveyors at ports of entry to sustain the dignity on which the rule is based.

10. If in the enactment of the clause "or such of them as are appointed for the district," the purpose had been merely to present, in a more "concise form," the two provisions of the act of 1790, which relate respectively to the case of two officers, and to the case of one officer, the legislature would have stopped when the "concise form" was complete, and would not have proceeded to repeat the second provision by adding: "or, if there be only a collector, then to such collector."

11. The words "and the remaining one-fourth to be equally divided between the collector, naval officer, and

surveyor, or such of them as are appointed for the district in which the seizure has been made, or the fine, or penalty, incurred," were used in the act of 1867, as the corresponding words were used in the acts of 1790 and 1799, because these acts, unlike the act of 1789, divide the distributable portion of the forfeiture into an indefinite number of equal parts, instead of three, and made the maximum number of distributees indefinite, instead of three; and to meet the requirements of this change in the law it was necessary to modify the clause first cited so as to make it include, not only the case of two officers, as in the act of 1789, but also the case of four or more.

12. The fact that congress has never interfered, by legislation, with any supposed construction of the act of 1867 by the secretary of the treasury, has no bearing on the question. Inasmuch as the court of claims has failed to "*find*" whether the secretary decided in favor of the surveyor of the port of entry, or in favor of the surveyor of the port where the offense was committed, or in favor of the surveyor of the port where the offense was discovered, the presumption that senators and representatives have been more successful is a violent presumption. The legislature is not to be forced to the alternative of either submitting to the annulment of its enactments by means of departmental constructions, or counteracting every erroneous ruling by a new statute.

13. There is neither finding nor proof that any parties concerned ever acquiesced in the construction adopted by the court of claims; and it was no part of the claimant's case either to deny or disprove such acquiescence.

14. The absence from the act of 1867 of the plural word "survey*ors*," which appeared in the acts of 1790 and 1799, has not the effect to restrict the distribution to one surveyor in districts having more than one. This plural word occurs only in the *provisos* of the acts of 1790 and 1799. The

provisions made in those *provisos*, including this plural provision, in another form, are systematically codified in the body of the act of 1876 and the *provisos* are omitted. Of course the plural word "survey*ors*" which they contained disappeared with them. If the *provisos* themselves had been retained, and this plural word omitted, the change might have had more significance.

15. The circumstance that the findings of the court of claims do not show whether the claimant did or did not demand payment of the secretary on any days other than March 20, 1874, and March 3, 1877, is not material. It was no part of the claimant's case to show persistent importunity of the secretary. It was not necessary for him to make even one demand. A failure to pursue the secretary could have worked no forfeiture of his claim.

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